INTERSTATE COMMERCE.

SPEECH

OF

HON. JAMES H. HOPKINS,

OF PENNSYLVANIA,

IN THE

HOUSE OF REPRESENTATIVES,

DECEMBER 4, 1884.

WASHINGTON:
1884.

SPEECH

OF

HON. JAMES H. HOPKINS.

The House having under consideration the bill (H. R. 5461) to establish a board of commissioners of interstate commerce and to regulate such commerce—

Mr. HOPKINS said:

Mr. SPEAKER: I think I can justly claim that the agitation of this question of railroad discriminations began in the district which I represent. Individual rights were so completely ignored, corporate power was so arrogantly and unfairly exercised, that the patience of our people was utterly exhausted, and they cried out for relief.

In the first session of the Forty-fourth Congress, I introduced a bill to regulate interstate commerce and to prohibit unjust discriminations by common carriers. And soon thereafter I secured the passage of a resolution instructing the Committee on Commerce to investigate the charges of favoritism and combinations by railroad companies. That investigation proceeded far enough to prove specific acts of gross discrimination. But by some process, never yet explained, the investigation was smothered at a critical juncture, and the testimony already taken disappeared from the committee-room. I feel sure that what I state will be corroborated by my distinguished friend the chairman of the Committee on Commerce, who was then a member of that committee. The gentleman from Texas (Judge REAGAN), to whom I refer, took a lively interest then in the effort to protect the people against the wrongs inflicted by corporations. And I am glad to know that ever since then he has labored faithfully, zealously, and ably to secure the legislation necessary to that end.

I am willing to admit that there is less ground for complaint now than existed nine years ago. But I apprehend the reason is that during that time eight States have embodied in their Constitution clauses prohibiting discriminations, and the further reason that bills have been pending in each Congress since to place the strong hand of the Government upon the offending corporations. If a wholesome fear of penal statutes has wrought so much good, it is fair to presume that the enactment of a law upon the subject will accomplish still greater results. And it is also fair to presume that the defeat of this bill will remove all restraints and cause a repetition of the wrongs so earnestly complained of. For the nature of corporations has not changed. They are as rapacious, remorseless, and selfish as they were nine years ago. They are as ready as ever to benefit their friends and favorites at the expense of the general public.

I think, Mr. Speaker, that this view is confirmed by the action of the great railroad companies in reference to the pending measure. Their opposition is earnest, persistent, and bitter. Whenever this question has been before Congress these corporations have appeared, represented by the ablest and most distinguished counsel whom money

could employ. I have here one hundred and eighty-nine closely printed pages of argument delivered before the Committee on Commerce in opposition to the Reagan bill. It is true that certain features of the bill are especially attacked; but it is equally true that the spirit of all these arguments is against any bill asserting the authority of Congress over the subject-matter, and prescribing penalties for violations of the law of common carriers.

If no wrongs are practiced or contemplated why this intense opposition? Just and law-abiding men have no fear of penal statutes. Corporations which intend to deal fairly and equitably with all men will not object to measures of relief to those who may be unfairly and unjustly dealt with.

While I think this is a legitimate inference from the hostility of the railroad companies we are not left to inference as to the substantial fact of the existence of great wrongs which this bill is intended to redress.

It is boldly and specifically charged that an arrangement exists by which the transportation of live-stock is controlled by an association called the board of eveners, who receive a bonus of at least $15 per car upon all live-stock shipped over certain lines of traffic. This sum is, of course, taxed upon the customer, and is a grievous burden to the poor to whom nutritious and cheap meat food is so essential.

Besides this, boards of trade, chambers of commerce, agricultural societies, and individual shippers in all parts of the country have sent up resolutions, memorials, and protests against the policy of discrimination practiced by most of the leading corporations. These are practical men, who have personal knowledge and experience of the injuries done them; and having failed to secure redress, they earnestly and emphatically demand that Congress shall throw its shield over them, and lay a rod on the backs of those who have oppressed them. All this goes upon the assumption that Congress has the constitutional power to grant the relief prayed for. Can there be any doubt of that? The Constitution expressly declares that Congress shall have power "to regulate commerce with foreign nations and among the several States."

And judicial decisions may be piled upon text-books monument high; and on every side may be read in the clearest language a construction of these words so plain and simple in themselves.

Commerce means more than the mere barter of goods. It embraces everything by which purchase and sale can be effected, including transportation.

In his Commentaries upon the Constitution, Story, reviewing the clause already quoted, says:

> It may, therefore, be safely affirmed that the terms of the Constitution have at all times been understood to include a power over navigation as well as trade, over intercourse as well as "traffic."

And the highest judicial tribunal in the land has again and again affirmed this doctrine, and maintained the complete power of Congress to control "the subject, the vehicle, and the agent" of commerce.

For sixty years this question has in various forms been before the Supreme Court of the United States, and I believe in every instance the power of Congress to regulate or control commerce in its broadest and fullest sense has been clearly and unequivocally sustained.

Chief-Justice Marshall said "a power to regulate navigation is as expressly granted as if that term had been added to the word 'commerce.'"

Whether or not this great jurist foresaw that other methods would be used for conducting commerce than by navigation, his arguments and

illustrations apply with equal force to commerce by means of railroads. He says:

> Commerce among the States can not stop at the external boundary line of each State, but may be introduced into the interior. * * * And if the trading intercourse be between two States remote from each other, must it not commence in one, terminate in the other, and probably pass through a third? (Gibbon *vs.* Ogden, 9 Wheaton.)

And, as if to emphasize the power of Congress, and sweep away all restrictions with which the ingenious counsel of railroad companies might seek to hedge in this power, Justice Marshall adds:

> This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.

And the only limitation is that contained in section 9 of article 1, to wit:

> No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

And yet we find to-day railroad corporations undertaking to do, ay, and boldly and persistently doing, that which Congress is expressly prohibited from doing.

The student of the Constitution is constantly compelled to pay reverence to the inspiration which guided the framers of that matchless document. They framed an instrument adapted to all circumstances, and to last for all time. They looked far into the future, and foresaw and provided for new and then unknown conditions. They saw the growth of corporate power, the exercise of franchises injurious to the people and yet beyond the control of State authority. And they provided that Congress should "control commerce among the States," and in that control that "no preference shall be given" to any locality. The current of trade was to flow in its natural channels, and no artificial shutes were to be permitted to turn it aside for selfishness or avarice.

To any unbiased mind it must seem clear that the pending bill is in the exercise of a power expressly granted, and is to correct abuses expressly prohibited.

For the benefit of those who have any doubt as to the powers of Congress in this regard, and for the convenience of those who wish to investigate the train of judicial thought upon this question, I refer to Gibbons *vs.* Ogden, 9 Wheaton; Steamship Company *vs.* Port Wardens, 6 Wallace; Passenger Cases, 7 Howard; United States *vs.* Coombs, 12 Peters; Redfield on Railways; The Clinton Bridge Case, 16 Am. Law. Reg.; The Clinton Bridge Case, 10 Wallace; Brown *vs.* Maryland, 12 Wheaton; The City of New York *vs.* Miln, 11 Peters; Grover *vs.* Slaughter, 15 Peters; Corfield *vs.* Coryell, 4 Wash. C. C. Rep.; Wilton *vs.* The State of Mo., 1 Otto; License Cases, 5 Howard; Erie Ry. Co. *vs.* Pennsylvania, 15 Wallace; The Granger Cases (4), 4 Otto; Railroad Co. *vs.* Richmond, 19 Wallace; Cooly *vs.* Board of Wardens, 12 Howard; Thomas *vs.* Railroad Co., 11 Otto.

From these authorities it will be learned that the power to regulate commerce means the power "to prescribe the rule by which commerce is to be governed." "And this intercourse"—which is covered by the grant of power and embraced in the definition of commerce—"must include all the means by which it can be carried on, whether by the free navigation of the waters of the several States, or by a passage overland through

the States." "The power to regulate it embraces all the instruments by which such commerce may be conducted." Transportation of passengers or merchandise through a State or from one State to another is of this nature.

"The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely within one State and some acting through two or more States, does not affect the character of the transaction."

"I have no doubt of the right of Congress to prescribe all needful and proper regulations for the conduct of this immense traffic over any railroad which has become part of one of those lines of interstate communication."

The power being settled beyond all controversy, why should Congress hesitate to exercise it? For years there has been a universal demand from the people that the abuses complained of should cease. But thus far corporations have defied the people. It remains to be seen whether or not they will respect the supreme law of the land.

During the present session, as during prior Congresses, delegations have come up from the people demanding Congressional aid against a power grown arrogant by long impunity. So far as I know, not a single association or individual has objected to the pending measure, except the officers and counsel of railroad companies. Even the shareholders of these corporations realize the importance to them of legislation which will prevent a recurrence of "railroad wars," so disastrous to all interested.

Jealousy and rivalry, and often the imprudent and unauthorized act of a subordinate official, causes the bitterest hostility between these companies, and they rend and tear each other like mad giants, and unsettle all commercial business during the struggle. They become reckless of the loss they inflict upon themselves, provided they can injure their opponents. Hence they need to be protected against each other; their stockholders need protection from the ruinous policy of their officers. And the wise provisions of this bill will accomplish that result. Pools and combinations—which are only made to be broken, and broken with disaster to all—are herein prohibited; and each company will be required to act upon business principles of healthful rivalry, which stimulates trade and rewards energy and diligence when exercised in accordance with judgment and experience.

The corporations opposing this bill in a general way admit their duty as common carriers, and in doing so they admit a constant violation of their duty; for common carriers are bound to receive and carry the goods of all alike, upon the same terms, and with equal facilities. (See Chitty's Commercial Law on this subject.) And yet the companies attempt to justify a policy in direct violation of this fundamental doctrine.

The law of common carriers is older than the Constitution. The duty of perfect fairness and impartiality to all shippers is clear and imperative. No discrimination, no favoritism can be tolerated.

Forced to admit that this is the law, the violators of it want to compel the victims to seek redress through the slow and inadequate remedies of the common law. They well know their vast advantage in such an unequal contest. The companies, with counsel employed by the year and with a well-organized force of witnesses, would be more than a match for any individual opponent. And they would worry and utterly crush out small shippers whose damages might be serious to them-

selves but too little to justify protracted and expensive litigation. In the interest of all, but especially of the poor and those of moderate means, it is necessary that there should be other remedies than the common law affords.

The pending bill provides some of these needed remedies, all of which sections I cordially support. But I propose to offer an amendment giving an additional and, in my judgment, a more effective remedy. Under it a railroad company can be compelled by a writ of peremptory mandamus to receive, transport, and deliver all goods offered for shipment upon equal terms and with equal facilities. The fear of imprisonment for contempt of court will have far more effect than any possible penalty contingent upon a verdict by jury. And, besides this, shippers can make contracts for the delivery of goods with a reasonable certainty that compliance will not be defeated by the arbitrary act of some railroad official. A compulsory enforcement of right is far more efficacious and satisfactory than even punitive damages for the wrong done. This remedy is prompt and vigorous, and I think adds much to the completeness of the bill.

The clauses in this bill creating a commission and prescribing its power and functions are, as I understand it, merely auxiliary to the general purpose. The rights and remedies of individuals can not be impaired by the commission. But, on the contrary, supplemental guarantees are herein provided for the maintenance of rights and enforcement of their remedies. There is a well-grounded fear in the public mind that the insidious power of corporations might control public officers charged with the oversight and partial regulation of those corporations. So that the usefulness and efficacy of the commission will depend upon the character of the men who may be appointed, upon their intelligence, zeal, courage, and incorruptibility. If redress could be had only through these commissioners, the injured people might well conclude that we were giving them but a barren scepter. I greatly prefer the substitute offered by the gentleman from Texas [Mr. REAGAN], but believing that no harm can result, and hoping for much good from the creation of the commission, I see in these provisions no sufficient ground for opposing the bill in case the substitute should not be adopted.

It is urged as an objection to this bill that it is another effort to centralize power in the Federal Government. I admit, Mr. Speaker, that this argument would be potential with me if I believed it had any substantial basis. I have seen with no little alarm the bold disregard of old-time rules of interpretation of the Constitution and the open attempt to absorb all power in the General Government, and to justify it in the name of patriotism. Surely the men who laid the foundations of the republic and cemented them with their blood, the men who reared the magnificent superstructure, strengthened every beam and arch and column and architrave with their prayers—those inspired builders knew how to adapt the several parts in perfect symmetry and strength, so that the completed whole presented a marvelous model without an omission or an excess. I can follow blindly, and with implicit faith, the guidance of the patriot fathers. And wherever they have indicated a limit of Congressional power, that is to me the *ultima Thule* of our jurisdiction.

But, Mr. Speaker, I have endeavored to show, and I think I have shown conclusively, that one of these powers especially given to Congress in the Constitution is the very power sought to be exercised in this bill. And, aside from that, this bill contemplates no exercise of

power by the Federal Government against the people. But it is an intervention in behalf of the people against corporations which oppress and defy them.

The wrongs are grievous and have at times been intolerable. The State authorities are powerless. Will Congress afford relief, or will an enraged people be left to seek that redress which is born of despair? I solemnly believe that this grave issue is presented, and it is the part of wise statesmanship to give it grave consideration.

While this bill guarantees but simple justice to the shipper, it is in no sense hostile to the railroad companies. I verily believe it will prove beneficial to them also. As soon as they adjust themselves to the requirements of the law they will realize the wisdom of its provisions, and the increased value and stability of their securities will justify the measure which their fear and their pride condemn.

Every sensible man recognizes the incalculable benefits which railroad companies have conferred upon the public. By prudent and just action these companies can quiet the angry discontent which prevails, and awaken a kindly feeling toward them. There is no individual or corporation too powerful to despise or defy this sentiment. I trust that Congress will aid in promoting it by the passage of this bill.

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INTERSTATE COMMERCE.

SPEECH

OF

JAMES F. WILSON,

OF IOWA,

DELIVERED IN THE

SENATE OF THE UNITED STATES,

MONDAY, JANUARY 5, 1885.

WASHINGTON
1885.

SPEECH

OF

HON. JAMES F. WILSON.

The Senate, as in Committee of the Whole, having under consideration the bill (S. 2112) to establish a commission to regulate interstate commerce, and for other purposes, the pending question being on agreeing to the amendment proposed by the Senator from Iowa [Mr. WILSON]—

Mr. WILSON said:

Mr. PRESIDENT: Whoever expects that a single act of Congress, however efficiently it may be executed, will eliminate from our transportation system the evils which have become parts of it will be disappointed. Nor do I include in the term "evils" many of those acts and omissions which excite the complaints of individuals concerning their personal affairs, as contradistinguished from those which, because of their more general effect, come to be regarded as matters of public moment. But whether we come to treat of the general subject from considerations affecting the one or the other or both of the suggested elements of the case, we shall surely find that no single act of Congress, however perfectly framed on the basis of present knowledge, and however wisely administered by those to whom its execution may be committed, will reach and wholly remedy the complicated disease which afflicts our transportation system. But this is no sufficient reason why the patient should not receive attention or why we should restrain ourselves from endeavors to discover and formulate a course of action which may ultimately effect an eradication of the disease. Because this may not be done at once, and in a measure perfectly, serves to disclose the difficulties that surround the subject but should not induce discouragement and enforce inaction.

The bill now commanding the attention of the Senate, while not fully coming up to the standard requisite to measure the great proportions of the subject with which it deals, is not exceptional in this regard. All of the bills which have been, from time to time, proposed have disclosed this defect; and all which may in the present and near future come to us for action will, in some degree, trouble us with their imperfections. But the present bill does possess one virtue which I hope may so far commend it to the favor of the Senate as to assure its passage. It proposes that this Government shall make a start in the matter of so regulating by law the great transportation service of this country as to ultimately put it into right lines of action as regards the relations which exist between it and the public. No single act of Congress can do more than to make a wise, just, conservative start concerning this very grave and very great subject; and I mean to include in the terms here used all of the powers and parties and interests embraced within the present conditions and future possibilities of the transportation question. Indeed wise, just, and conservative action can not be had by any move-

ment which fails to considerately regard any material element of the case. And all experience teaches us that disaster is more likely to spring from attempts to do too much at the beginning of movements in the field of legislative action embracing complex subjects of public interest and concern, such as this bill relates to, than from the hesitation which evidences that cautious deliberation which, while it may lack speed, gives promise of enduring results.

To begin right is the prime factor in all reforms. If no mistake be made in this regard each successive step is most likely to be twofold in character and effect. It will define a permanent advance and at the same time disclose how others may be made. No matter how extended the ramifications of such an evil as this bill treats of may be, they can be traced, and it can be removed, if the instrumentality directed thereto be rightly selected, its effects intelligently observed and assured by the adoption of such means as they indicate. Hence, in dealing with the transportation question, notwithstanding its magnitude and complex character, we have a rule for our safe guidance, and if we but give it due consideration we shall not go wrong and do mischief instead of effecting a needed reform by eliminating evils detrimental to the general welfare.

Mr. President, many persons who have given more or less thought to the phases of the transportation question which now confront us doubt whether or not the present bill will accomplish the purposes of the committee which reported it. I should join the ranks of the doubters if I did but regard this bill the end of effort instead of the beginning. Viewed from the latter standpoint it seems to me that the measure is one of sufficient merit to command my support. Therefore, notwithstanding I have proposed several amendments to the bill, it is not my purpose to interfere with its declaratory provisions, nor its general structure. The adoption of the amendments will not stay the operation of any essential provision of the bill should it become a law. The regulations and restraints imposed on corporations and others engaged in the transportation of interstate commerce, the declarations of right, powers, and duties affecting whosoever may come within the scope of the bill, including the commission established by its terms, will all go on and have their legitimate office and effect as fully as in the absence of said amendments. For while they definitely deal with several of the most pronounced and generally complained of evils of the present methods of the transportation system, it is only in a way calculated to bring to our aid, at the beginning of the first regular session of the next Congress, such light as may come from definite data and exact information to be derived by the commission by virtue of the investigation it is directed to make on the lines of inquiry defined by the terms of the amendments. In the mean time, should the bill become a law, we will have had the results derived from several months of its practical operation. This will test the question as to whether or not we have made a wise beginning, and the results of the commission's investigation will indicate the lines on which we may pursue further effective action. Surely such a course of action is sufficiently conservative to commend itself to every mind desirous of that proper caution which, in the end, always tends to impress stability on the institutions, laws, and other results to which it leads.

Mr. President, we have crossed the line at which the transportation companies once stood and challenged the power of Congress to do the things which this bill and the amendments propose. Indeed Congress

was invited to cross it by one of said companies. A New Jersey company claimed a monopoly of the carrying trade between Philadelphia and New York. A rival company entered the field and carried freight and passengers to and from the two cities. The former company asserted its monopoly in the court of New Jersey and obtained a decree requiring its rival to account for and pay over to it all earnings received from said traffic, and perpetually enjoining it from transporting through freight and passengers between the said cities. What did the enjoined company do? It came to Congress and presented a petition praying for the passage of an act to authorize it to engage in the business in respect of which the chancellor of New Jersey had enjoined it. The proper committee of the House of Representatives, after due consideration of the petition, reported a bill to grant and give effect to the prayer thereof, basing its action on that provision of the Constitution which confers on Congress power "to regulate commerce with foreign nations and among the several States, and with the Indian tribes." But the bill so reported related solely to the restrained New Jersey company, and proposed to exercise this great power for the mere purpose of resolving this contest between two local corporations created by the laws of the State of New Jersey.

This was in the Thirty-ninth Congress, of which I was a member. It seemed to me that if the power was to be exercised at all it should be in form of a general application to the subject involved, and be made to include all of the railroads of the country. In pursuance of this view I prepared and offered an amendment to the bill reported from the committee, which was adopted and became a part of the act approved June 15, 1866, entitled "An act to facilitate commercial, postal, and military communication among the several States." The amendment thus proposed by me and now a part of said act is in these words, namely:

> That every railroad company in the United States whose road is operated by steam, its successors and assigns, be, and is hereby, authorized to carry upon and over its road, boats, bridges, and ferries, all passengers, troops, Government supplies, mails, freight, and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination.

That this exercise of the commercial power of Congress was, and is, satisfactory to the transporting companies of the country is uninterruptedly evidenced on all of their lines, in every State of the Union, and during every day of the year. It is because of this exercise of the now undisputed power of Congress that solid passenger trains run from New York to Chicago, to Saint Louis, to New Orleans, and other points; that sleeping and hotel cars traverse the continent; that freight goes from Maine to California, from Chicago to New Orleans, along all lines and over all distances in the same cars and without breaking bulk. This is a great reform over old methods which changed freight and passengers at the end of each several company's line. It was a right start in the exercise of this great power in the field of operation to which the act referred to applies. It was induced by friction in the affairs of two New Jersey companies. Its results are accepted, praised, and defended by all companies, and approved by the entire country.

The principle imbedded in the act of June 15, 1866, is broader than any application that has yet been given to it by the railroad companies whose operations now go on under it. They seem to treat that act as one which does no more than confer certain privileges on them. Neither the rule of public policy involved nor the terms of the act will justify

such conclusion. Heretofore, and in a different place from this, I expressed my views of this particular phase of the case in language which I apply to it here to-day, namely:

> No one can doubt what the rule of public commercial policy thus established is, nor question its wisdom. The policy is, through lines of transportation for passengers and freight passing from one State to another State—the abolition of unnecessary changes, delays, breaking of bulk, and attendant wastage, cost, charges, and loss of time. These were to end, so far, at least, as the means at the command of the railway companies could be utilized to effect that result. Commerce was to be facilitated. This rule was established not merely for the benefit of railroad companies, for their convenience and greater profit, but for the advancement of the interests of the great and constantly augmenting interstate commerce of the country, and of every one connected therewith, either as passenger, or shipper, or producer, or consumer of things transported.
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> That legislation did not merely confer a privilege on railroad companies, which they might use or not, at their pleasure. Running with this privilege, and inseparable from it, is the duty of using it for the public good, a duty which constitutes the consideration for which the privilege was granted to them.

The purpose of the act referred to was clearly stated in its title. It was: "An act to facilitate commercial, postal, and military communication among the several States." Its enactment was the exercise of a great constitutional power for a public purpose. It established a public policy. The authority conferred on railroad companies within the definition of the act was equivalent to a command. The authority to do was associated with the duty to do; and with this duty ran every obligation imposed on common carriers by the common law, and such additions thereto or modifications thereof as Congress had declared or may by law provide. The facility extended to interstate commerce was not confined to its mere movement over the lines of the several railroad companies, but included as well its equality, its convenience, and its protection. It was not the purpose of the act, nor the office of the public policy thereby established, to create burdens, impose restraints, and to obstruct the ways of interstate commerce; its declared purpose was to facilitate commercial communication; in other words, "to make easy or less difficult, to free from difficulty or impediment, to lessen the labor of" the movements of the interstate commerce of the country. Whatever contravenes the rule of public policy thus declared by Congress is unlawful.

The employments of men and the results and movements thereof constitute commerce. This definition embraces producers, dealers, transporters, and consumers. They are all present in interstate commerce. Neither may impose arbitrary restraints on the others which tend to destroy equal freedom of action in the lines of lawful commercial movements. The transporters should be the great conserving force of commerce, and this they would be if kept within the lines of obligation and duty through which alone they can best promote the general welfare. But when they depart from this rule and interfere with those normal conditions of business which are induced by freedom of choice and action on the part of those who create and pursue it, they cease to conserve its best interests and obstruct the general welfare; and this is just what the transporters of this country have done and still are doing. They are not content to administer their own affairs and let the other factors of business and commerce do the same with theirs, but on the contrary they have intermeddled with everything and forced upon the country abnormal conditions patent to all observing minds. It is this fact, more than all others combined, that has caused the existing manifestation of popular irritation relative to the railroad corporations of the country.

Nor will this state of popular feeling cease until these intermeddling practices shall come to an end. The people of this country can not be brought to an acceptance of the abnormal system of forced combination and centralization with which the transporting corporations have bound to their own real or supposed convenience the industries of the country. I am glad to feel assured that this is so; for I can not believe that the present tendency to drive the manufacturing industries and all who employ and are employed therein to a comparatively few localities will tend to conserve the best public interests, whether we regard them from the standpoints of moral, material, or political consideration, singly or combined. The system is repressive and unjust. A body politic can no more thrive under a system which confines the vital forces represented by its employments, its business, its commerce to a few points than can a natural body whose life currents are obstructed and denied their normal action. A self-reliant man, whose independence and individuality assert themselves in his ways of life, is always a conquering force. A nation thrives by multiplication of such men; it weakens and dwarfs as their numbers diminish. The rule is not confined to individuals. It applies to communities as well as to men. A self-reliant, energetic, prosperous, contented community is a national force. Multiply this force, and the nation grows in strength, prosperity, contentment; and so long as these conditions exist its power will increase and its institutions endure.

Mr. President, a diffusion of industries will multiply such communities as will give us the results I have indicated, and this diffusion will transpire whenever the transportation shackles shall have been stricken from the willing limbs of communities now impatient of the restraints which hold them to inaction. They want to move, but they can not. They witness the processes of forced centralization going on, and feel and know that the vast concentration of capital, and work, and workers in the ponderous cities gives back no augury of encouragement to us to let this system go on unchallenged. I do not mean by this that we should so legislate that cities shall cease to grow; but I do mean that the practices of the transporting corporations whereby abnormal growth is forced upon a few cities at the expense of the equal rights of other communities shall cease by voluntary action or be reformed by law, and in saying this I look beyond the field covered by the material interests of those other communities as they may be affected by a diffusion of industries throughout the country, and into that even more intricate one where the action of political forces tends to resolve the weal or woe of this Republic. Nor do I make the suggestion in any sense from the standpoint of partisan consideration, but from that better view which takes in the public good, the general welfare and stability of our institutions, regardless of the effect which may fall to any party organization or association of men.

Every close student of public affairs in this country knows that the weak point in our political machinery is to be found in the great cities. We do not always find that jealous care in the political methods of great cities which is ever present in the smaller communities and rural localities. There is a vitality of vice which constitutes no inconsiderable political force in the former that rarely appears in the latter. But I have no purpose to pursue the discussion of this phase of the general subject here. It will be forced on our attention at no distant day, if this practice of forced centralization be allowed to go on unchecked, in a manner that will give us a clear definition of the saying, "Paris is

France," and when we may have to undo something which we can now do much to prevent. And it is a cause of profound regret that the railroad companies, when the act of June 15, 1866, was passed, did not enter upon the new order of things which it both authorized and commanded with an intelligent fairness that would have compassed their own convenience and the unquestionable rights of the people both as respects communities and individuals. That great comfort, convenience, and expedition in the matter of the transportation of interstate commerce have resulted from that act is undisputed. But the act meant more than these results. It meant that persons and localities connected with the interstate commerce of the country should have equality of treatment; that transportation should be the servant and not the master of commerce; that such disadvantages as business might be under at any points or localities from natural causes should not be aggravated by hostile discriminations in transportation rates; that each locality, industry, and person should be entitled to and receive a fair proportion of the advantages that were expected to result from the improved transportation facilities authorized by said act, and that by these means and in these ways commercial communication among the several States should be facilitated. This was the public policy authorized and established by the act of Congress.

This, as I have already remarked, was a good start; and had the act been given its full and intended force, very little, if any, complaint would now be heard in all this country concerning the transportation of interstate commerce. Connecting by practice the duties and obligations of common carriers with the things which that act authorized the railroad companies to do, a realization of the natural and necessary results springing therefrom would have silenced almost every complaint that has been lodged against the corporations engaged in the transportation of interstate commerce. Nor would this have worked injustice or harm to the railroad companies. On the contrary, it would have established harmonious relations between them and the public, and have tended to augment rather than diminish the volume of business supplied to the carriers. It is one of the incomprehensible business blunders of our times that an opportunity so favorable to the true interests of the railroad companies was not seized upon by them and converted into a bond of amity between them and the public. It needed no surrender to unreasonable demands to accomplish this. A decent respect for the obligations imposed on them by the law relating to common carriers would have met the extremest exactions of the case so far as those elements of it which I am now discussing are concerned. The opportunity was neglected, and this was supplemented by a studied disregard of those obligations which can not be discharged by repeated violations.

The remonstrances which the public has opposed to this course can not successfully be dismissed by denouncing them as popular clamor. Nor will the earnest thought which is now focused on this subject be diverted by assertions that "natural laws and individual interests" will sooner right existing abuses than can be done by the enactment of statutes. I stated at the beginning of my remarks that whoever expects that a single act of Congress, however efficiently it may be executed, will eliminate from the transportation system the evils which have become parts of it will be disappointed, and our experience proves it. But no one will say that the laws already enacted and directed to that end have not done some good. The improved service which has been assured to the country is a complete justification of what has been

done; but this does not compensate for, nor will it excuse, the abuses which have kept pace with it. While due credit will be given for the former, the latter will enforce agitation until a remedy shall have been provided.

The "natural-laws" theory that is advanced by the railroad companies as the unfailing remedy for all of the ills which have become fixed upon our interstate transportation system would do very well if the corporation doctors would allow their patient to take the medicine. But this is just what they will not do except as coercion, gentle or otherwise, is applied to overcome the idiosyncracies of a system which teaches one thing while it practices another. Natural laws tend to maintain the best conditions, no matter whether they relate to physics, morals, trade, commerce, or other fact or movement. Give free course to the natural laws about which so much is said in discussions relative to the subject of which the bill we are now considering treats, and I will agree that the relations existing between the public and its complex interests and the railroad companies would soon be resolved into movements of harmony and conditions of good-will. But this free course is not allowed to the natural laws in question, and, therefore, we have the agitation which demands that other laws shall be provided.

But the demand is not for enactments in contravention of the said natural laws. The demand made is reasonable, and its reasonableness consists in the fact that it only asks for such enactments as will enable commerce to enjoy the rights, freedom, and advantages which would be assured to it by the unobstructed action of said natural laws. It does not exact other and different conditions than those which the normal action of said patural laws would induce. The case is quite the opposite of that which the railroad companies present. Let them remove their arbitrary obstructions from the ways of commerce and allow it to move on the fair, just, and orderly lines of said specially pleaded natural laws, and the controversy will be at an end. Even the occupation of the demagogue who seizes upon popular discontent to serve his selfish purposes and to promote his personal and conscienceless ends will be gone. No one who possesses the slightest conservative tendency towards the practice of fair dealing has any desire to impose unjust terms, conditions, or laws on the railroad companies. Every well-informed man realizes and admits the great benefit they have been and now are to the country. No well-informed and honest man would for a moment entertain a proposition whose tendency would be to cripple the efficiency of the railway service. Every intelligent railway manager knows this to be true. And yet, in the face of this knowledge, the evil genius of arbitrary interference with the natural laws of commerce is allowed to have its way. This is the masterful spirit which has evoked the demand that now presses on this Senate and asks it to conserve the true interests of the country and its commerce by such just and conservative action as will restore the sway of those natural laws which are so often presented as a plea in bar to our progress in the direction indicated.

Mr. President, let us briefly examine this plea in the light of some of the evil practices that have become fixed in the administration of the transportation system of this country. What natural law of commercial action can be cited in justification of the arbitrary discriminations with which the transportation companies annoy, perplex, and punish localities, communities, investments, employments, and individuals in almost every department and division in their field of oper-

ations, or warrants them in their persistent efforts to destroy competition, and then because of failure to impose arbitrary rates for service rendered to the business of all non-competing points in order to make good the losses occasioned by the uncertain, whimsical, and unremunerative charges so often given to and from competing stations; to determine what places may engage in the manufacturing industries and which shall not; to encourage the investment of capital in some localities and to repress it in others; to say what towns or cities, other than the great commercial centers, may be selected by jobbers and wholesale merchants in which to pursue their business and to put all others under the ban of ruinous discriminations; to so discriminate between individuals engaged in like business in the same community as to enrich some and bankrupt others; to close the doors of opportunities against men of moderate fortunes, who otherwise would plant industries where real estate and food are cheap, and thereby furnish diversified employment to willing and waiting workers in multiplied localities, and only open those which lead to centers already overcrowded; to foster combinations in business and employments of capital in such manner as to suppress individual endeavor and repress the self-reliant trait in American character; to load down the railway lines of the country with burdens of fictitious securities and insist that no limitation shall be placed on the power to exact rates to any extent necessary to pay interest and dividends thereon; and to do whatever else may be suggested by pleasure, circumstance, or caprice of those who manage their affairs? All of these elements are present in the case, and in view of this fact I can but repeat the question, What natural law of commercial action can be cited in justification of these things?

Let us further test the real character of our transportation system by a more definite examination of some of its elements, taking as the first the one which involves the creation of fictitious securities. At the close of 1883 the total railway mileage in the United States was 120,552 miles. The cost thereof is represented by shares of capital stock issued amounting to $3,708,060,583, funded debts $3,455,040,383, floating or unfunded debts $332,370,345, representing a total cost of $7,495,471,311, or an average cost per mile of $62,176. And right here we have one of the most inexcusable features of our railway system, for it is safe to assume that the actual cash cost of the entire system did not exceed one-half of the nominal amount I have stated, and that the average per mile was but little, if any, more than $30,000. This feature of the case is remarked upon in Poor's Manual of Railroads for 1884 in this language, namely:

> It is safe to assume that the new mileage constructed in the past three years cost about $30,000 to the mile, and that when our people build, say, 10,000 miles of line in one year, they expend upon them $300,000,000. In addition, a very large amount of fresh capital is yearly expended on old lines, so that we have for many years past been expending upon railroads considerably over $100,000 for every working day in the year. Should a large portion of the cost of new lines be lost the country is undoubtedly the richer by a corresponding amount from the incidental advantages they confer, the opening up of vast tracts for settlement, and in bringing within the reach of markets products which had before no commercial value.

There would be no danger of the loss suggested if the railroad lines of the country were limited in their financial burdens to the cost of construction, including equipment and all other expenditures necessary to their effective operation. It is not the real but the fictitious burden which cripples the roads and disturbs the business of the country. And were it not for this fact the railway securities of this coun-

try would be almost, if not quite, as stable in value as Government bonds. Treating of this view of the case, the author from whom I have just quoted says:

> If it be assumed that the cost in money of all the roads in operation in the United States in 1883 did not exceed, as it certainly did not, the amount of their funded and floating debts, $3,787,410,728, the actual investment was a most profitable one. The net earnings for the year were $3,336,911,884, a sum equaling about 9 per cent on their cost. If the fictitious capital could be eliminated from their accounts, their success as investments would have no parallel. If to net income be added the advantages that flow from them, the result would be a matter of special wonder. Our railroads the past year transported over 400,000,000 tons of freight. At $25 per ton the value of this freight would equal $10,000,000,000. It is enough to say that, compared with the wealth of the country thirty years ago, they have created on this continent a new nation. While penetrating every portion of the continent, at least wherever our people go, they for the first time create the conditions of a firm and compact nationality.

Here we have a group of facts and opinions most suggestive. We see that if the railroad corporations had been held to the safe and conservative lines of the law relative to such artificial persons, this country would now be in possession of not only the most magnificent railway system in the world, but also the most prosperous, stable, and remunerative one. But, unfortunately, too many of the promoters of the system have been allowed to run riot over all sound provisions of the general law of corporations and of every correct principle of business economy. In many cases this ruinous course has had the sanction of public authority, while in others it has been pursued in direct violation of limitations imposed by law. And while it may be true that all of the abuses in the action of railroad corporations in the past may not now be remedied, it certainly is well for us to consider how far they can be corrected and how future repetitions of them may be prevented. It is not a pleasant fact for the people of this country to contemplate that our railway system is called on to pay dividends on capital stock and interest on funded and unfunded debt representing an amount twice as great as the cash cost of the roads. And while they may agree to all that the author quoted says relative to the great benefits which the country has derived through the railway system as it has been developed and now exists, still they will charge up to this feature of the account the burdens which rest upon the business of the country because of fictitious capital, which constantly cries aloud for interest and dividends.

It is not difficult for any man to see that too little money has gone into the treasuries of the companies to balance the amounts which the stock and bonds represent. And it is very generally understood that the law and public policy do not authorize the creation of such obligations except in return for a full equivalent paid into the treasury of the corporation in whose name they issue. If this rule had been observed every railroad company in the country that can present a reasonable excuse for having built a road at all could now earn a reasonable annual return on all of its cash capital invested by charging much less than the present average rates charged, and its bonds and stock would not need the gambling manipulations of the stock exchange to give them an appreciable value. It is true that by this conservative procedure there might not have been so many colossal private fortunes evolved as under the practice which has obtained; but the country would be in possession of a sound and satisfactory railway system in harmonious relations with the people and their business interests, and whose securities would rank with the best.

Leaving out of view the many cases of fraudulent stock issues representing no capital whatever, we need but direct our attention to some of the practices of the most solvent and conservative railroad companies to discover how fictions enlarge their aggregate of shares. It is no uncommon thing for such companies to capitalize expenditures for improvements, betterments, extensions, and other outlays of many kinds. Hundreds of millions of dollars earned in the ordinary course of business have been so capitalized and made a perpetual burden on the future earning capacity of the respective roads. In some cases I am informed that the capitalization of such expenditures as I have indicated amounts to nearly if not quite the original stock shares of the companies, and in about all cases to many duplications of the money which has gone from the holders to the treasuries of the companies. I am not inclined to impose a hard rule on the corporations relative to their earnings. I believe that the public will be content with such an adjustment of rates that the earnings therefrom shall be sufficient to pay operating expenses, interest, necessary improvements, and a reasonable dividend on the stock shares representing money or other valuable thing paid to the companies toward the construction of the roads.

But it is not right that any part of these earnings and expenditures shall be capitalized and stock shares issued therefor. This is money supplied by the public patronizing the roads. It does not come from the private funds of the owners of the roads. What rule of fairness and justice will allow such money to be turned into stock shares in order that the public supply the funds required to pay dividends on it? And how long can this process go on before even present solvent companies will break down under the ever-increasing weight which this process imposes? The rapidly changing conditions in our country and the rest of the world ought to be considered by the managers of our railway system. Instead of overloading their respective companies by the methods adverted to it should be their care to relieve them as opportunity offers. The very multiplication of roads should impress caution on them. While those who manage the trans-continental lines may well study the effect which the construction of ship-canals connecting the Atlantic and Pacific Oceans may have upon the business of their roads, it is well that these considerations be not overlooked either by those who manage the railways or those who are charged with the powers and duties of legislation.

Mr. President, it is because I recognize the benefits which have come to this country through the railway system that I feel anxious to aid in effecting such reforms as will establish cordial relations between it and the people. The railroads have been of immense value to this nation. I quite agree with the general statement of the case as put by the writer from whom I have quoted, wherein he said:

> It is enough to say that, compared with the wealth of the country thirty years ago, they have created on this continent a new nation. While penetrating every portion of the continent, at least wherever our people go, they, for the first time, create the conditions of a firm and compact nationality.

While this is true as a general statement, it nevertheless suggests some considerations tending to restrain the enthusiasm it is well calculated to evoke. When we put our minds earnestly to the subject we come to realize that our legislative authority, both State and national, has been less wise than the railway system has been absorbent and forceful. Had this not been so the abuses of which there is now so great complaint would never have grown to their present proportions.

This is quite clear to our comprehension now. The public and the legislative minds were entranced by the beauties of the panorama of magnificent results as it unrolled itself during the greater number of those thirty years. If attention had not been so wholly given up to that absorbing contemplation we might have become possessed of all the beauties and results without the defects we now discover, and at much less cost. While the roads were penetrating every portion of the continent and creating the conditions of a firm and compact nationality their promoters and managers were, possibly with the best intentions, introducing methods and practices which have produced abnormal results now far from satisfactory to the greater portion of the country. One of these I have already noticed at some length, and that is the system of forcing everything possible to a few great centers. The entire power of the transportation companies has been bent to effecting this end. This was done by so adjusting rates as to force everything to the favored centers.

The centralization aimed at has been accomplished, and this is what renders the low rate on the long haul, of which so much discussion has been had, a necessity to the interior portions of the country. A mere declaration that the railroad companies shall not charge a greater rate for a shorter than they do for a longer haul will not cure the evil of forced centralization. The foundations of this structure have got to be sapped and mined by the adoption of a system of regulation that shall eradicate the entire nest of vipers of discrimination which now are used as aids to maintain the policy of centralization. While it remains the low rate on the long haul is the only door through which the West and far interior can reach the distant markets at the points of centralization. It is not the abolishment of the low rate on the long haul that is the immediate need of those great regions of our country lying distant from the dominant market centers. The thing most needed is a change of the system which keeps producers and consumers of both agricultural and manufactured products so far apart, forcing the greater volume of our interstate commerce to be transported over great distances, thereby rendering the low rate on the long haul a necessary element in the freight traffic of the country. The present conditions enforce an abuse of this very proper element of commercial movement by degrading it to the improper office of maintaining the present policy of centralization in opposition to one which would tend to diffuse the industries and employments of our people throughout all sections of the land.

But when we shall have changed existing conditions and established a system of commercial transportation more in harmony with the general welfare, experience will teach us that we will still have highly important use for the now abused practice of granting a low rate for the long haul. We can hardly expect that the time will come when the demand for domestic consumption will be equal to the entire volume of the productions of our people. Agriculture, manufacture, and mining will continue the present practice of producing more than we can consume. If we are to have no surplus in the future, why are we casting about for the discovery of methods for the revival of our ocean carrying trade? Do we expect the other nations of the world to so adjust their navigation laws as to put us in possession of their carrying trade? Do we expect England to foster the production of wheat in India, in order that our restored merchant marine may flourish by transporting it to the world's markets? These illusions are not in our minds. We anticipate an enlargement of the volume of our surplus, and expect to

compete with other nations in disposing of it, and in order to do this successfully our products, of whatever kind, of the far interior must have the advantage of the low rate on the long haul to the seaboard. And so it will be, under the best conditions we can establish relative to a general diffusion of employments and industries, when commercial transportation must be made over long interior lines, it must have a corresponding advantage in rates; for this tends to a diffusion of values, and is not inimical to the widest distribution of industrial pursuits. The principle is a correct one. Let it be applied to its proper office and it will be promotive of the public good. Its abuse in our present system of commercial activity is the true cause of complaint. I shall be rejoiced when we reach the point from which we can take a new departure in this regard. But the difficulties which I see in the way constitute one of the reasons which led me to say that disappointment will come to any one who expects a single act of Congress to eliminate all of the evils that have become parts of our transportation system.

When we consider that the defects and abuses of the system which we now seek to reform have been developing and embedding themselves in it through the practically undisturbed progress of a period of about thirty years, we must not be too sanguine in our expectations in respect of their immediate elimination. Not merely the railroad corporations stand opposed, but all persons, associations, firms, communities, and interests participating in the profits and advantages resulting from the things complained of are ranged along with them. The great cities whose overtowering advantages and powers have been upbuilded on foundations laid of the evils and abuses of the general system; the communities whose successes in the main have come through arbitrary discriminations enforced against others; the associations which thrive on the effects of unequal rules imposed on their competitors; the firms whose prosperity is the fruit of transportation favors not accorded to others; the persons who revel in the luxury of rebates and drawbacks, will not be swift to see that a reform which proposes to enforce the principle of equality in respect of matters of commercial transportation is one of the supreme needs of the present juncture. But the change will come; for well-founded discontent with the present order of things is too prevalent and justly forceful to cease its efforts until a real reform shall be established.

I know how apt we are in this country to believe that anything, no matter how intricate or difficult it may be, can be accomplished at once and perfectly. But a moment of serious reflection will serve to convince us that this belief is not in accord with our experience. Great reforms have not been in the habit of appearing in full life and vigor at first command. They have been evolved rather than specially created. And it will be so, in greater or less degree, with the one we now have in mind. It will not be perfect from the start. But to be anything it must have a start. Having this it will grow, and ultimately develop into the form we desire. It may be best not to undertake to do too much at once. This consideration induces my support of the bill reported by the committee and now before the Senate. It certainly does not include all that I hope to have done. But as the act of June 15, 1866, was a good start in the matter of asserting the power of Congress to regulate the transportation of interstate commerce, so is the present bill a good beginning of the legislative action which will ultimate in a system of commercial regulation adapted to the right

protection of all the varied interests to be affected, and, hence, promotive of the general welfare.

The provision of the bill which establishes a commission for the administration of the system proposed has my most hearty approval. With the aid of a competent commission a complete system of interstate commercial regulation can rapidly be developed, and in manner and form which will justly care for all of the complex interests to which it will apply. The amendments which I have proposed to the bill do not, as I have heretofore remarked, interfere with the structure or declaratory provisions of the measure, and I am content to have them incorporated in such manner and places as the Senator from Illinois [Mr. CULLOM], in charge of the bill, may prefer. I deem these amendments important to the ultimate perfection and success of the scheme presented by the bill, and, therefore, earnestly advise their adoption.

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INTERSTATE COMMERCE.

SPEECH

OF

HON. RICHARD COKE,

OF TEXAS,

IN THE

SENATE OF THE UNITED STATES,

WEDNESDAY, JANUARY 21, 1885.

WASHINGTON.
1885.

SPEECH

OF

HON. RICHARD COKE,

OF TEXAS,

IN THE SENATE OF THE UNITED STATES,

Wednesday, January 21, 1885.

The Senate, as in Committee of the Whole, having under consideration the bill (H. R. 5461) to establish a board of commissioners of interstate commerce, and to regulate such commerce—

Mr. COKE said:

Mr. PRESIDENT: I have not participated in the debate upon the subject of interstate commerce now before the Senate up to this time for the reason that the House bill, it was known, would after a while become the subject of discussion, and my opinion of the Senate bill is and has been that it is a measure of no practical value, and that any amendment in accord with its theory would fail to give it anything of usefulness or merit.

The House bill is one which I hope will be examined thoroughly by the Senate. It is a conservative measure.. It is thoroughly well considered. It is the product of a debate and discussion in the press, in the two Houses of Congress, and among the people of ten years standing, and it represents in its principles and policy the popular will on this great question.

This bill provides that freight and passenger in interstate railroad transportation rates shall be reasonable. It prohibits all discrimination in freight rates between individuals. As an adjunct to that proposition it prohibits rebates and drawbacks. It prohibits pooling and thereby promotes competition. It prohibits discrimination in freight rates between localities by forbidding a greater charge for a short haul than for a longer haul. Lastly, it requires the posting up of schedules of the rates of freight charges, and announces a penalty for charging more or less than the posted rates.

These are the great, leading, salient points of the House bill. I appeal to Senators to give the bill a candid examination and a fair hearing. I deem it proper to say this because the votes of the Senate taken within the last two weeks seem to indicate an opposition to the provisions of the House bill. An examination of that bill will show that it is a just and reasonable measure. It will show further that it embodies in its essential points that which is already the common law of the land in all the States. The States have the common law. The

United States have no common law. That is to say, in every State in this Union the common law, as it is understood and adjudicated, prevails, while under the Government of the United States, a government of granted powers and of statutory enactments, the common law is not the general law. I believe I have stated the proposition correctly as it has been adjudicated in the courts, hence the necessity for Congressional legislation.

The Reagan or House bill contains the common law as adjudicated and enforced in the States on the subject of common carriers. I assert that to be a proposition which can not be denied. It prohibits all discriminations in freight rates between individuals. Is it necessary for me to cite authorities upon this proposition? I apprehend it is not with members of the legal profession at least. If it were I could cite any number of decisions of the highest courts in this country.

Mr. MORGAN. Does the Senator refer to the common law or the statute law of the States?

Mr. COKE. I am speaking of the common law. I will refer to two or three cases which I find conveniently grouped in an able argument of Mr. Chittenden, of New York, before the House Committee on Commerce, which fully illustrates the common law on the subject of pooling. Ten or twelve canal-boatmen in the State of New York scraped together a thousand or twelve hundred dollars each and bought each one of them a canal-boat. Upon these canal-boats they lived winter and summer and the year round with their families, and made their living by running them. Ten or twelve of these horny-handed men concluded that they would form a pool; that they would make a combination; that they would put their boats into a joint-stock company and run them under one head and divide the profits. Those men were sued in the courts of New York, and the supreme court of New York decided that the pool, the agreement, the joint-stock company of these canalmen was an illegal enterprise, and the combination was broken up. I have here what the judge delivering the opinion of the court said with reference to the combination. He said:

> It is nothing less than the attainment of an exemption of the standard of freights, and the facilities and the accommodations to be rendered to the public, from the wholesome influence of rivalry and competition. To produce that end more completely, each member binds himself not only to run all his present boats according to the agreement and turn their earnings into the common stock, at the rate agreed upon, and at which rate he is to be charged in the final distribution, though he may have received or charged less, but he is also prohibited, under severe penalties, from employing on any other terms boats subsequently acquired. The association being thus secure against internal defection and external encroachments, and the members having thrown their concerns into stock, to derive an income in proportion to the number of shares they hold, and not according to their merited activity in business, and safe against the reduction of compensation that would otherwise follow mean accommodations and want of skill and attention, the public must necessarily suffer grievous loss. Indeed the consequences of such a state of things would be that freighters and passengers would be ill served just in proportion that carriers were well paid.

That was a pool between canal-boatmen whose misfortune it was to be poor and to only have a thousand or twelve hundred dollars apiece with which to purchase ten or twelve canal-boats. Here in the sixty-eighth volume of Pennsylvania State Reports, page 173, is the case of The M. Railroad Company *vs.* Barclay Coal Company, in which the court said:

> The effects produced upon the public interests lead to the consideration of another feature of great weight in determining the legality of the contract, to

wit, the combination resorted to by these five companies. Singly, each might have suspended deliveries and sales of coal to suit its own interests, and might have raised the price, even though this might have been detrimental to the public interest. There is a certain freedom which must be allowed to every one in the management of his own affairs. When competition is left free, individual error or folly will generally find a correction in the conduct of others. But here is a combination of all the companies operating in the Blossburg and Burday mining regions, and controlling their entire productions.

They have combined together to govern the supply and the price of coal in all the markets from the Hudson to the Mississippi Rivers, and from Pennsylvania to the lakes. This combination has a power in its confederated form which no individual action can supply. The public interest must succumb to it, for it has left no competition free to correct its baleful influence. When the supply of coal is suspended the demand for it becomes important and prices must rise; or, if the price goes forward, the price fixed by the confederates must accompany it. The domestic hearth, the furnaces of the iron-master, and fires of the manufacturer, all feel the restraint, while many dependent hands are paralyzed and hungry mouths are stinted. The influence of a lack of supply or the rise in the price of an article of such supreme necessity can not be measured. It permeates the entire mass of the community and leaves few of its members untouched by its withering blight. Such a combination is more than a contract; it is an offense.

That is the decision of the supreme court of Pennsylvania. It is leveled against combinations of the character denounced by the Reagan bill, which but voices in its main provisions the best established maxims of the common law. Judge Hallett, in delivering the opinion of the court in another case, which was concurred in by Judge McCrary, commences with the following declaration:

The duty of common carriers to give equal service upon equal terms and upon reasonable compensation to all who may apply to them to carry persons and property is as well established as any rule of the common law.

Mr. MORGAN. Was that a Federal court?

Mr. COKE. Yes, sir; Judge McCrary and Judge Hallett in the circuit court of the United States. Judge Hallett proceeded as follows:

And whatever is inconsistent with it or with the purpose for which it is adopted is against public policy, and can not be upheld. The defendant refuses to carry to and from Denver, except in connection with the Rio Grande road; not absolutely, indeed, but for the price charged in connection with that road. To say to the public that the rate should be less by the Rio Grande road than by any other line is in effect to say that the public shall use that road only. A very little difference in tolls will prohibit traffic over other lines, and clearly enough such was the effect in this case. It is admitted that the defendant refuses to carry, in connection with the complainant, at the same rate of charges as with the Rio Grande Company, and then it charges for such carriage a much higher rate. For all practical purposes this course of proceeding amounts to a refusal to carry, except in connection with the Rio Grande road.

Says Mr. Chittenden:

After considering the excuses urged for the necessity of this action, Judge Hallett declines to speak at length of the contract, lest he "might convey an impression that for some purposes these corporations have the powers which, in this instrument, they have assumed to exercise." He declares that it is enough to say that it is a conspiracy to grasp commerce and to suppress the building of railroads in two great States, and he cites decisions of the courts of New York, Pennsylvania, and other States in which similar provisions have fallen under condemnation.

That is a very instructive case, and a very able note to that case by Mr. Adelbert Hamilton, one of the editors of the Law Reporter, says:

There can be no question that according to American authority a railroad pooling contract is monopolous in its tendency and objectionable as such, for these three reasons, so tersely reported by Lord Coke in Darcy *v.* Allen (2 Coke's Reports, 84), where, speaking of such monopolies, it is said: "A monopoly hath three incidents mischievous to the public: First, the raising of the price; second, the commodity will not be so good; third, the impoverishing of poor artificers."

I assert as an undeniable proposition: First, that at common law the charges of a common carrier must be reasonable. Second, that a common carrier can not discriminate in freight rates between individuals. Third, that common carriers can not pool and thereby prevent competition. At common law these propositions are indisputable. I will go further and say that the prohibition upon pooling, that the equality as to all persons for whom they carry enjoined upon common carriers at common law, prohibits discrimination between places. I assert further that the highest public policy requires that common carriers who, like railroad corporations, exercise a part of the sovereignty of the state in condemning land under the right of eminent domain, exercise to a certain extent public offices, public trusts, shall be amenable to public supervision, and that these public offices, these public trusts, the people are entitled to know all about in their administration, and that, therefore, the railroad companies should be required to post up their schedules of rates of freight charges as required by the House bill. All the propositions which I have enumerated are contained in the House bill. There is nothing more nor anything less in the House bill than those propositions except the modes and methods of enforcing them.

Mr. McPHERSON. Would it interfere with the Senator's speech if I should in this connection ask him a question?

Mr. COKE. Not at all, sir.

Mr. McPHERSON. I ask the question for information entirely. As I understand the Senator's remarks, they reach the point that a railway company having the power to condemn or take private property for a use, it must be a public use and to the public benefit. So far I agree with the Senator fully, and perhaps I might even go further, because I believe that if a railway company, having the power to condemn private property for public use, fails to conserve the public interest, it has then no more right to that land than a custom-house officer has to the custom-house at the end of his term of office.

But the point I wanted to raise was this: Does the Senator go so far as to say that Congress should intervene when the rates are reasonable? I do not suppose anybody would go beyond saying that the rate must be reasonable. Suppose it is reasonable, and still the railway companies decide to pool. In short, how can you reach a railway company for pooling the freight while maintaining reasonable rates? How do you propose to punish them? Let me put the question still broader. What is the justice in attempting to punish a transportation line for pooling its business with other lines when at the same time all the lines in the pool maintain reasonable rates?

Mr. COKE. I understand the Senator's question. I will say to him that in the State of New York, where the pooling contract of ten or twelve canal boatmen was incontinently squelched and sat down upon by the courts, there is a pool of forty-odd railroads which control the commerce of that great city and all its dependencies, which openly defies all the power and authority of the State. The conclusive presumption of law is that damage results from a violation of law. To hold that a party may violate the law on his idea that no damage will result from it would destroy all law. The mere fact of violating the law is an offense or crime without reference to its results.

Mr. McPHERSON. If I may again interrupt the Senator, I think there is a very wide distinction between the parallel he draws and a railroad company. It is well known to the Senator that the people of the State of New York, owning the Erie Canal which the people of that

great State and the property of that State were taxed to construct, decided to abate all the tolls upon the canal because they deemed it to be a public benefit. They furnished the so-called canal boatmen, of which the Senator speaks, with water ways free of cost from the lakes to the seaboard, upon which they had the privilege of traveling without any cost whatever except simply that of pulling their boats. If I understand the case correctly they undertook to establish an unreasonable rate, and by means of a pool to continue an increased rate to the public detriment. I must submit to the Senator that there is a very wide distinction——

Mr. COKE. I yielded for a question and not for a speech.

Mr. McPHERSON. Very well; I shall sit down.

Mr. COKE. I will say to the Senator from New Jersey that the pool among these canal boatmen, of which I speak, according to my remembrance was made and decided before the State of New York ever threw open her canals, and the action of the court in deciding that the pool was unlawful, because in contravention of the common law, was dependent upon no such action of the State of New York as that to which the Senator adverts.

Mr. McPHERSON. That alters the case in a measure.

Mr. COKE. Yes, sir.

Mr. President, I say that the Reagan or House bill is simply a codification of the principles of the common law in all the great leading points of the bill—principles that are enforced every day in the administration of law in the States. They can not be enforced in interstate commerce by the States, because there is no authority in the States having jurisdiction over the subject, and Congress alone has the power.

Mr. HARRISON. Will the Senator from Texas allow me to ask him a question?

Mr. MORGAN. If the Senator from Texas will allow me to ask him a question just there, I will ask if he has not cited a case here in which Federal judges have in a circuit court of the United States applied these principles of common law to transactions between railroads out in the West, and if the Federal courts have not as much power as the State courts in the administration of those principles of the common law which he says are codified in the Reagan bill?

Mr. COKE. Yes, the decision to which I adverted a while ago, participated in by Judge McCrary, was the decision of a Federal circuit court. The principles of the Reagan bill are legal principles that are standing in every State in this Union and enforced every day by the State courts.

Mr. HARRISON. I wished to ask the Senator a question.

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Indiana?

Mr. COKE. Certainly.

Mr. HARRISON. Perhaps the Senator from Alabama asked the question which is in my mind; I could not hear quite what he said. If it be true that the Reagan bill simply puts into the form of statutory law the common law of the country, is not that common law now applicable to interstate commerce, and have not the courts of the United States jurisdiction to enforce it without reference to any statute?

Mr. MORGAN. That was the point of my question precisely.

Mr. COKE. The Senator from Indiana is simply repeating the question of the Senator from Alabama.

Mr. HARRISON. I could not hear what the Senator from Alabama said.

Mr. COKE. I say that the principles of the Reagan bill are the principles of the common law in all substantial respects; but the railroad companies deny the power of Congress over this subject. The Senator from Kentucky [Mr. BECK] yesterday read from the argument of Governor Brown, of Tennessee, representing 6,000 miles of railroad in the Southwest, to show that he denies that Congress has the power to legislate upon this subject. I believe that the courts of this country have a right to enforce the leading propositions of the Reagan bill, but the country generally is in doubt on the subject. The railroad companies deny the power, and it has been thought by the House of Representatives of sufficient importance to the country that Congress should legislate upon the subject, and if necessary re-enact what may be, and as I think is already the law of the land on the subject of common carriers.

Mr. Fink, a leading and representative and very able railroad man, the man who, at the head of the New York pool of upward of forty of the leading lines of road in the United States, denies the power of Congress to legislate on this subject, and in his argument before the House Committee on Commerce made this denial in the most emphatic terms. Let Senators who desire information on this subject consult the records of the House Committee on Commerce, and they will find that the leading, governing men in our railroad system and the attorneys of the roads all deny the power of Congress to legislate as proposed in the Reagan bill, and are defiant in the assertion of their right to violate every principle asserted in it and to be themselves the judges of what is reasonable and right in running the roads.

And besides, the Reagan bill provides remedies not given by common law, remedies shown to be necessary to enable the citizens to overcome the great advantages the railroad corporations have over them in matters of litigation and contest.

The Reagan bill says that freight charges shall be reasonable. No Senator will controvert the correctness of that proposition. The Reagan bill provides that railroad corporations shall not discriminate in their charges between individuals. Is not this just and right? Let the Senator who claims it is not rise in his place in the United States Senate and declare that these public corporations, public agents and trustees, have the right to discriminate, as they are now doing every day between persons, and that all American citizens are not equally entitled to the service rendered by these public servants. Let him put himself on record as affirming that some people in this country ought to have freights at half that charged to others and that the railroad managers are of right the sole judges as to who these persons should be.

In order to prevent discriminations between persons the Reagan bill prohibits rebates and drawbacks. Rebates and drawbacks occur where a person is ostensibly charged as other people are for similar service and the railroad companies pay him back amounts by way of rebate, and thereby give him an advantage. It is said by Judge REAGAN, who had charge of this bill in the other House and is its author, that in eighteen months $10,000,000 were paid to the Standard Oil Company, in the State of Pennsylvania, in rebates, and through that discrimination in favor of that company the company has been able to strangle every particle of competition in the United States.

These are two of the propositions in the Reagan bill. The third

prohibits pooling. I have read to you from decisions of both State and Federal courts and could read hundreds of others, for the books are full of them, declaring that combinations of that character are contrary to public policy and unlawful. In the language of the Pennsylvania judge, "It is more than a contract, it is an offense."

The fourth is that it prohibits discrimination in the freight rates between localities by forbidding a greater charge for a short than for a longer haul. If the individual ought not to be discriminated against, if there should be no discrimination between single individuals, ought there, by parity of reasoning, to be any discrimination between collections of individuals in cities and towns? Ought there to be any discrimination between a collection of individuals in a city or town if the law requires that there shall be none between individuals? I think the one proposition is corroborative of the other.

If the first proposition is correct the latter can not be wrong. All the complications sought to be thrown around the difference between "the long and the short haul" can not obscure the fact which stands out in bold relief that all the individuals, all the people, between the initial and the terminal points of the long haul are discriminated against and taxed with high freight rates in order to make up alleged losses on the long haul. The Reagan bill, conservative in this as in all its provisions, does allow as much charged for the short haul as for the longer haul, but not more; and because of the prohibition upon more for a short haul than a longer one on the same road is assailed violently as an effort to disturb the laws of commerce. In my judgment, the bill is too liberal to the railroads in this respect, but of this they have no right to complain.

The fifth proposition requires the posting up of schedules of rates of freight charges and prescribes a penalty for charging more or less than the posted rates. Have not the public a right to know the rates? Mark you, the railroad corporations exercise functions derived from the States in the condemnation of their right of way through this country. They have possession of the highways. They carry the mails. They drive off all other sorts of competition. There is no way of exchanging our products overland except by their cars. Does any gentleman mean to say that the action of these corporations, which in the language of a New York judge execute public offices, should be secret, and that they should not post their rates in public places so that the public whose powers they are exercising can know about them and govern itself accordingly? Is this not a fair and reasonable requirement?

These five propositions, prohibiting discriminations between individuals, prohibiting rebates, prohibiting pooling, prohibiting discrimination between places, and requiring rates to be posted up in public places, are all the requirements of the Reagan bill, and everything else in the bill simply prescribes the methods of enforcing them. This is the bill which has been denounced by railroad officials and attorneys, by members of the United States Senate and House of Representatives and a considerable portion of the press of the country as a most intolerable outrage upon the rights of railroad corporations. For the most part, a simple re-enactment or codification of well-established common-law principles necessary to protect the citizen against the rapacity of corporate power which the corporations declare are not binding on them, and violate every day, is declared from these sources to be a most dangerous, revolutionary, and abominable thing for Congress to do.

A motion was made by the Senator from Illinois [Mr. CULLOM] to

take up the House bill, and after it was taken up he moved to strike out all after the enacting clause and to insert the Senate bill. What does that mean? It means that the prohibition upon discriminations in freight between individuals shall be stricken out of the House bill.

Mr. CULLOM. Will the Senator allow me to interrupt him?

Mr. COKE. Certainly.

Mr. CULLOM. If the Senator will allow me, I will state that the Senate bill does not mean that. It expressly prohibits unjust discriminations.

Mr. COKE. I will discuss the Senate bill after a little. I will show what sort of a bill it is. It will strike out the prohibition of discrimination between individuals. It will strike out the prohibition of rebates and drawbacks by which the railroad companies secretly discriminate in favor of individuals. It will strike out the prohibition upon pooling. Is there anything in the Senate bill which prohibits pooling, declared by the highest State and Federal courts to be unlawful? It will strike that out. It will strike out the prohibition against discrimination in freight rates between localities. It will strike out the requirement that the railroad companies shall let the public know what their rates are so that men may make their business contracts accordingly. The motion is to strike out these provisions and insert the Senate bill.

The Reagan bill comes here from the House of Representatives, not upon popular clamor, but upon a settled popular judgment. I know that the people sometimes go wrong, but give them a little time and they will always rectify their own errors. Their sober second thought is the perfection of human wisdom. The popular clamor, which it is said wafted this bill from the House here, has been a steady demand from the people for ten years through every method by which public opinion is ever voiced. The constitutions of twelve States of this Union contain the provisions of the Reagan bill in their substance. Legislatures of States, political conventions, boards of trade and exchange, county, district, national, and State conventions have all in turn spoken in behalf of the provisions of the Reagan bill. It comes here indorsed by the other House after ten years of discussion, after ten years of debate, and it would never have come over the obstructions and hindrances and opposition of the railroad corporations and their retainers and friends but for the masterly ability and the courage and persistency of a distinguished citizen of my State, whose name the bill bears and who has linked that name imperishably with a manly and brave defense of popular rights against the encroachments of corporate power. This bill thus indorsed, thus containing in the main only the principles of the common law as they are decided in the States day after day and year after year, and as it is settled and established—these plain, clear provisions are to be stricken out, and the Senate bill substituted, if the motion of the Senator from Illinois [Mr. CULLOM] prevails.

Now, Mr. President, I propose to discuss very briefly the Senate bill. That bill was denounced upon the floor of the Senate a few days ago by the honorable Senator from Arkansas [Mr. GARLAND], in an argument that no man has attempted to answer, as unconstitutional. No Senator has risen in his place and controverted the positions of the Senator from Arkansas as to the unconstitutionality of that bill.

Mr. PUGH. If the Senator from Texas will allow me, I will state

that the amendment which I offered to the second section was to meet the objection of the Senator from Arkansas to the second section, and I showed him that amendment and he admitted that it avoided his objection. The objection was that the second section would be a delegation of all the power Congress has over interstate commerce. The amendment limits the powers of the commission to those specified in the act itself. It is a limitation of the power and not a delegation of the power Congress possesses over that subject.

Mr. COKE. I understand the amendment to be just as the Senator from Alabama states it so far as it goes; but the Senator from Alabama must remember that the objection of the Senator from Arkansas went not alone to the second section. To use his own language, under this bill these commissioners start out as a legislative body, but as they go on into the sections they become a court; they have the power to administer oaths, to call for books and papers, to summon witnesses, to enter judgments. Yet they are to be appointed by the President and removable at his will and pleasure. Are they to be judges? If they are to be judges, if they are to exercise judicial functions, that bill violates the plain letter of the Constitution and all the traditions of this Government and of the Anglo-Saxon race in making a judge dependent for his salary and his bread upon the pleasure of the President or any executive officer. In so far as the President is authorized to remove, it trenches upon the constitutional requirement that judges shall be appointed for life. It destroys the independence of the judge. If there is one thing established in American constitutional jurisprudence it is that the judges are and shall ever be independent of the Executive.

This bill as originally reported to the Senate gave legislative powers to this commission, except that it did not authorize a penalty in its enactments without which they could not have been enforced. It gives as it now stands to this commission judicial powers, except that it can not issue an execution or injunction, nor enforce its judgments. What then does the bill amount to? When the House of Representatives, obeying the mandate of the American people, send here a bill putting a curb upon the power of great railroad pools and corporations for the protection of the people you move to strike that out, to ignore it, and to insert under the enacting clause a provision which establishes a commission which has no legislative power under the amendment of the Senator from Alabama, and whose judicial power is unconstitutional and void, and if it were not, whose judicial power is a mere bauble and plaything, because without power to enforce itself, or even to protect itself by fining for contempt.

Then what do you propose to give to the House of Representatives in place of an efficient bill declaring that which is right and just and reasonable? What do you propose to give them in place of that bill which the motion of the Senator from Illinois would trample under foot, and ignore, but this hybrid concern, a legislature which is impotent and a court which is powerless? That is the Senate bill.

But I call attention to another feature of this bill. Under sections 5 and 6 there are clauses which provide for a complaint to the commission by parties having grievances against railroad corporations. The commission is to hear the complaints and the evidence in support of them, and to make out its judgment and advise the railroad companies to comply, to obey. If the railroad companies choose not to obey, then

the commission are to turn the papers over to the United States district attorney of the district where the grievance occurred for suit against the railroad company. The evidence taken, however, is only for the information of the district attorney, not of the court or jury. The point I make is this: It is a well-settled legal principle that Congress has power to regulate interstate commerce. The States may act upon the subject as long as Congress chooses not to intervene; but, as was decided in McCulloch *vs.* Maryland and in Gibbons *vs.* Ogden, whenever Congress does intervene, whenever Congress does regulate, the power of Congress is exclusive and supreme.

Now, Congress, if this bill passes, does act and its action is exclusive. Would not the citizen upon the passage of this bill, if it should pass, find himself compelled to apply to this commission, and is he not ousted of the remedies that he now has in the courts of the country, and must he not come before this commission first? Must he not make his complaint first before this commission and wait until the commission has heard him and has sent his papers to the United States district attorney before he can go into the courts of the country as he can go now?

I object to it on that ground, and I call attention to the fact that there are nine commissioners provided for. Including the district of Columbia and other Territories there are forty-seven States and Territories in this Union. Divide 47 by 9. Each commissioner will have an average of five States and Territories under his jurisdiction. Can any one man hear and determine the complaints against the railroad companies in five States and Territories embracing long distances? I think not.

Mr. MAXEY. Will my colleague allow me to suggest a point in that connection? If the citizen is required under the Senate bill to go before the commission, and if the railroad companies refuse to abide by its decision and force him into the courts the costs are double, making the burden that much more.

Mr. COKE. I was coming to that proposition. Here you take away the remedies the people now have and send them before a commission that is unconstitutional in its judicial functions; you interpose this powerless commission between the people and a remedy. You must recollect that these complaints against railroad companies are by the statutes of the different States mostly barred in one year, that there are hardly any of them which are not barred in two years; yet you force a man in Oregon, in California, in Texas, in the remotest confines of the Republic, to Washington before this commission with his witnesses and attorneys at great expense, and for what? To get the commission to express an opinion which the railroad corporations deride and ignore with impunity; and while this is being done the statutes under which the complaint is barred by local law run and the citizen's remedy is gone. That is the proposition before us; that is in substance and effect this commission bill. Instead of giving a remedy to the citizen you are taking away from him the only remedy he has and giving him a worthless thing that is not worth the paper it is written on. The people ask for bread and you cast them a stone.

Now, Mr. President, it is proposed that the Senate of the United States shall ignore the reasonable, sensible, simple propositions contained in the Reagan bill, embodying substantially the common law of the land, which should be left to the courts of the country at the homes of the people of the United States to enforce, as is done in the Reagan bill. It is proposed to ignore these, although the people have demanded them

in every form in which they can speak, and give them the remedy of a commission which takes away from the people the only remedy they now have and leaves their complaints against the railroad companies barred by limitation before they find out whether the commission will allow them to bring suit or not.

I call attention to another feature of this bill. It provides that when the commission send these complaints to the district attorney the Federal courts, regardless of citizenship, shall have jurisdiction. It discriminates against the State courts; it ousts the citizen of his right to sue in his courts at home and drags him to the Federal courts perhaps hundreds of miles away. In the first place it drags him perhaps three thousand miles to Washington with his witnesses and lawyers in order to present his case to a commission which is utterly powerless to give him redress.

Mr. MORGAN. Will the Senator allow me to ask him a question? I had supposed that the purpose of the House bill was to confer jurisdiction on the Federal courts.

Mr. COKE. No, sir. The House bill leaves all litigation that arises under it at home where the transaction occurred and witnesses and parties reside.

The Senate bill will bring litigants in the first place to Washington before the commission; and who believes that this commission can hear 10 per cent. in a year of the complaints that ought to be filed against railroad companies? Does any man believe that this commission can hear them and intelligently decide them? It can not be done. The offer of such a remedy is a denial of any remedy at all.

Mr. President, these are the bills: The Reagan bill, a plain, direct bill, to be enforced by the courts of the country; the commission bill, establishing a new tribunal, which will be declared unconstitutional, and which, if it is constitutional, has no more power to enforce what the commissioners believe to be right than I have or any Senator sitting around me has. These are the bills between which we must choose.

Mr. President, there is more in this debate than appears on the surface to the casual observer. We hear on all sides earnest professions of a desire to remedy evils which all admit permeate our present system of railroad management. These professions are doubtless sincere. It is the more difficult in view of this fact to understand and account for the evident leaning of the Senate, as shown by the numerous ay-and-no votes taken on amendments proposed to the Senate bill, against the simple, direct, and straightforward provisions of the Reagan bill, so reasonable in themselves and so easy of enforcement by the courts of the country already established, and the equally evident disposition of the Senate to adopt a commission bill establishing at a heavy expense a tribunal without power to accomplish anything, and from the date of its creation as proposed in the Senate bill perfectly helpless and powerless.

The honorable Senator from Georgia [Mr. BROWN] has aided materially in solving the difficulty referred to in a bold and explicit avowal of his own views on this subject, and in the light of his able and learned speech made a few days ago we are able to understand much of what before was enigmatical. The high character as well as the acknowledged ability of this distinguished Senator, while vouching for the sincerity of his utterances, when coupled with the fact that he is a successful railroad president and practical administrator of railroad affairs, in a word, a leading and representative railroad man, gives to the views

expressed by him peculiar significance. The honorable Senator, disdaining any subterfuge while directing his adroit and powerful argument against the Reagan bill, which he regards with the utmost aversion, and declaring that he will support the Senate bill in preference, does not hesitate to say that he is opposed to both bills and to any legislation on the subject. He says further that he favors the pooling of railroad lines as the only practical solution of the railroad problem in this country, and in the short extract I now read from his speech places himself distinctly on the ground now advocated by Mr. Charles Francis Adams, jr., of Massachusetts:

This system works injustice both to the merchant and the purchaser. What the merchant wants is a uniform system where every man will be charged reasonable prices and no more, and where everybody is charged alike, and that is right. But, as matters now stand in the transportation world, you can get that only under the pooling system. There is no other possible way to reach it in practice. As there has been some sharp criticism of the Southern Railway and Steamship Association, as there must be about the management of all great interests of that character, I want to read here what a very wise and very able man, who is in no way connected with the South or with the association, says on the subject—a gentleman who has spent many years of his life in studying the railroad problem, a gentleman who is one of the oldest railroad commissioners in America, a man of high character and distinguished ability as well as of a distinguished family. I refer to Hon. Charles Francis Adams, of Massachusetts.

The honorable Senator then quotes copiously from Mr. Adams in advocacy of the pooling or consolidation of railroad lines, and says:

We may first appoint a commission composed of a small number of persons. In practice it will soon be found that they need numerous assistants and subagents scattered all over this country. The job we are undertaking will be entirely too large for any five, or seven, or ten men, without an enormous retinue of subalterns. What commission at Washington can grasp this whole subject and look into all the details of railroad transportation?

Again, he says:

It is simply out of the question, and in practice it will soon be found so, and the position will then be taken that it is absolutely necessary to increase the force, and it will grow from one point to another until the agents of the Government in a few years will be found located in all parts of the Union supervising this immense interest.

The honorable Senator opposes the Senate bill commission, but would infinitely prefer that to the Reagan bill. He desires, like Mr. Adams, that the Government shall "hands off" and leave the railroad lines to consolidate in a "federation" under one head and a government of their own. This *imperium in imperio*, I will remark, it is not contemplated shall have in it any representation from the people, but is to be constituted of railroad men and to be a law unto itself, free from Government interference, with full power to tax all the products of this country the vast commerce carried by rail as it may deem expedient and right.

An examination of the discussions before the House Committee on Commerce, which were able and exhaustive, will show that the views expressed by the Senator from Georgia on this subject and by Mr. Charles Francis Adams are shared by all the leading railroad men of this country, and that the project of perfecting a grand consolidation of all the railroad lines in the United States in a federation under one government and one head is not only contemplated but in process of consummation, and will be consummated if Congress shall fail to act energetically on the subject. I read from what Mr. Adams has written about it:

Beyond and behind this, however, the railroad corporations of the United States have from the beginning enjoyed a sort of lawless independence. Cor-

porations, like communities, accustomed to this, necessarily remain for a long time restive under any sense of control. They need constantly to feel that a policeman's eye is upon them, and that there is a station-house in the next street. No one or two great corporations have yet been developed with power sufficient to assume a coercive protectorate over the others and to compel obedience. The combination of the trunk lines and their recent action toward their connections in the West is the first approach yet made toward this result. But without the cohesive influence of some such protectorate there is in all voluntary combinations a natural tendency to anarchy. In the absence, therefore, of any compelling force to secure order and subordination, the mill of competition has got to keep on grinding for some time yet. Its work is not done. Indeed, it will not be done until, through the process of its grinding, the great principle of the survival of the fittest is finally ground out.

This process is unlikely to prove a rapid one, for order is not easily established in any community which has been long in a state of anarchy. In such cases the demoralization becomes general; the tone of the individual deteriorates. This is what is now the matter with the railroad system of America.

I ask the attention of Senators to this:

Lawlessness and violence among themselves, the continual effort of each member to protect itself and to secure the advantage over others, have, as they usually do, bred a general spirit of distrust, bad faith, and cunning, until railroad officials have become hardly better than a race of horse-jockeys on a large scale. There are notable individual exceptions to this statement, but taken as a whole the tone among them is indisputably low. There are none of that steady confidence in each other, that easy good faith, that *esprit du corps*, upon which alone system and order can rest. On the contrary, the leading idea in the mind of the active railroad agent is that some one is always cheating him, or that he is never getting his share of something. If he enters into an agreement his life is passed in watching the other parties to it, lest by some cunning device they keep it in form and break it in spirit. Peace is with him always a condition of semi-warfare, while honor for its own sake and good faith apart from self-interest are, in a business point of view, symptoms of youth and defective education. Under such circumstances, what is there but force upon which to build? It was the absence of the element of force which caused the failure of the Saratoga association and probably will cause the failure of those which have succeeded it. Taken as a whole, the American railroad system is in much the same condition as Mexico and Spain are politically. In each case a Cæsar or a Napoleon is necessary.

He proceeds:

When, however, the time is ripe and the man comes, the course of affairs can even now be foreshadowed; for it is always pretty much the same. Instead of the wretched condition of chronic semi-warfare which now exists, there will be one decisive struggle in which from the beginning to the end the fighting will be forced. There will be no patched-up truces made only to be broken, for the object of that struggle will be the complete ruin of some one in the shortest possible time. Then will come the combination of a few who will be sufficiently powerful to restrain the many. The result, expressed in a few words, would be a railroad federation under a protectorate.

Again he says:

The united action of the great through lines is necessary to bring this about; and how to secure that action is now the problem. If the elder Vanderbilt were alive and in the full possession of his powers, he would probably solve the difficulty in the way most natural to him. Meanwhile, although Commodore Vanderbilt is dead, there are very significant indications that his work is going on. His vast property, in the peculiar shape in which he left it and as it is now handled, seems to be little else than an accumulated fund devoted to bringing about a consolidation of railroad interests on the largest possible scale. The New York Central is the basis upon which this superstructure rests.

These are the views of Mr. Adams, so highly eulogized by the Senator from Georgia. He favors a railroad federation, a railroad government, under the imperial head of some great railroad magnate. I will read to you a little more from him. I have a speech entitled "Views of Charles Francis Adams, jr., on the subject of a national railroad commission," delivered before the Merchants' Association at Boston, and after discussing the character of men who ought to be on a com-

mission, and fearing that such men would not be put upon a commission, he said:

> Given a commission such as I have suggested, and the so-called railroad problem would present few difficulties. It would either be understood and regulated, or, what I consider much more probable, it would be understood and largely let alone.

I read from Mr. Adams, because he is a leading representative railroad man, and expresses the views of the governing men of that class in this country. He desires and expects to see the railroads of the United States united in one grand federation, one grand and magnificent monopoly, made up of all the smaller monopolies. If he were in the Senate to-day he would vote for the Senate bill and denounce the Reagan bill, and would defeat both, if in his power, as the Senator from Georgia would, for the simple reason that he believes the railroad corporations should be "let alone" to go on and perfect their "federation."

I read again from the same speech:

> Composed of such men the commission would be of the greatest public service, and a credit to the country. Men like these, I assure you—and I am now talking of what I know—wielding the great force of publicity, and letting light into dark places, with Congress behind them, would call for few of those stringent laws which the average legislator loves so to pass. If, however, your commission is to be made up not of men like these, but of men with "claims on the party," or any of that kind of cattle, then it would be a nuisance and a disgrace, and the end would be worse than the beginning.

It would be a disgrace to have in the commission any representative man of the popular sentiment of this country on this subject, and that is precisely what Mr. Adams means when he speaks of "such cattle."

Now, Mr. President, I desire to call the attention of the Senate to the fact that learned and scholarly and intellectual man as Mr. Adams is represented to be, and illustrious as his family name is, he sometimes changes his opinions as well as do others. I will read some extracts from his book on the railroad problem written some years ago, when surrounded by circumstances different from those which now attend him, and ask the Senate to mark the dangers he then so ably depicted to the Government and the people of the railroad combinations he now so earnestly advocates:

> Gould and Fisk will at last be obliged to yield to the force of moral and economical laws. * * * Though the regular process of development may be depended upon in its ordinary and established course to purge American society of the worst agents of an exceptionally corrupt time, there is in the history of this Erie corporation one matter in regard to which modern society everywhere is directly interested. For the first time since the creation of these enormous corporate bodies one of them has shown its power for mischief and has proved itself able to override and trample on law, custom, decency, and every restraint known to society, without scruple and as yet without check. The belief is common in America that the day is at hand when corporations far greater than Erie—swaying power such as has never in the world's history been trusted in the hands of mere private citizens, controlled by single men like Vanderbilt, or by combinations of men like Fisk, Gould and Lane—after having created a system of quiet but irrepressible corruption, will ultimately succeed in directing government itself. Under the American form of society there is now no authority capable of effective resistance. The National Government, in order to deal with the corporations, must assume powers refused to it by its fundamental law; and even then is always exposed to the chance of forming an absolute central government which sooner or later is likely to fall into the very hands it is struggling to escape, and thus destroy the limits of its power only in order to make corruption omnipotent. Nor is the danger confined to America alone. The corporation is in its nature a threat against the popular institutions which are spreading so rapidly over the whole world. Wherever there is a popular and limited government this difficulty will be found in its path, and unless some satisfactory solution of the problem can be reached popular institutions may yet find their very existence endangered.

Again he says:

Here, amid the ruin they had contrived, it is best to leave the Erie Railway, its directors, their tools, and their victims, the exchange, the business community, and the Gold Board [referring to the celebrated Black Friday]. When all is said and done, the confusion and dismay prevailing was only no more than what the presence of such a disturbing power as the Erie Railway, in the control of such hands, must always render possible, even if it be not periodical. In themselves the men are nothing; as rulers of the corporation they become terrible. The spring and autumn of 1868, and the spring, summer, and autumn of 1869 had seen the last appliances of civilization perverted into the machinery of organized theft; and through them acts of fraud, treachery, and violence had been unblushingly perpetrated before all men. Since the days of the feudal barons no private hands had wielded such a power in a way so unscrupulous. Risk will not deter them, for ruin can not touch them; to them belongs the gain, but not to them the loss.

Other depredators, by sea and by land, fly from the officers of justice; but these men [Fisk and Gould] ever find securest shelter under the protection of courts of law, whose magistrates they make. Safe in that protection, cowed but not subdued, it is fit and proper here to leave them, masters of Erie, and, as a consequence, masters of the situation, but a blot upon the civilization of the nineteenth century and a lasting disgrace to that financial and commercial organism which renders possible, and that public opinion which tolerates, their existence.

As was said by another:

Such was the picture drawn of Mr. Gould in the earlier stages of his great career by Mr. Charles Francis Adams, jr., now sitting beside him in loving companionship in the same board over which, by Mr. Gould's will and pleasure, he now presides.

Mr. Adams, since the above was written, has been made by Mr. Gould the president of the Union Pacific Railroad Company.

There is his description of Mr. Gould. Here is the description of the power of railroad corporations. He says the Government will have to assume powers not granted by the Constitution in order to protect itself against the dangers they threaten to it, speaking of one single corporation, the Erie; and now this same gentleman advocates a consolidation of all the railroad corporations in the United States, under one grand head, free from Government control. Against his views of former years he advocates a grand railroad federation; and in the speech that I have just read to you, delivered before the Board of Trade of Boston, he does not even desire a commission to interfere; he desires no legislation, but wishes the combination to run on under the will and control and government of men of whom he says, in an extract from his book which I have just read to you, they are simply the worst character of horse jockeys on a large scale.

I read again. Says Mr. Adams:

One leading feature of these developments, however, is, from its political aspect, especially worthy of the attention of the American people. Modern society has created a class of artificial beings who bid fair soon to be the masters of their creator.

It is but a very few years since the existence of a corporation controlling a few millions of dollars was regarded as a subject of grave apprehension, and now this country already contains single organizations which wield a power represented by hundreds of millions. These bodies are the creatures of single States; but in New York, in Pennsylvania, in Maryland, in New Jersey, and not in those States alone, they are already establishing despotisms which no spasmodic popular effort will be able to shake off.

Yes, Mr. Adams would have a grand railroad federation of all the corporations in this country when he says a few of them in these States have established despotisms "which no spasmodic popular effort will be able to shake off."

Everywhere, and at all times, however, they illustrate the truth of the old maxim of the common law that corporations have no souls. Only in New York has any intimation yet been given of what the future may have in store for us

should these great powers become mere tools in the hands of ambitious, reckless men. The system of corporate life and corporate power, as applied to industrial development, is yet in its infancy. It tends always to development—always to consolidation—it is ever grasping new powers or insidiously exercising covert influence. Even now the system threatens the central Government.

He does not now feel that a consolidation of all the railroads will do it.

The Erie Railway represents a weak combination compared to those which day by day are consolidating under the unsuspecting eyes of the community. A very few years more and we shall see corporations as much exceeding the Erie and the New York Central in both ability and will for corruption as they will exceed those roads in wealth and in length of iron track. We shall see these great corporations spanning the continent from ocean to ocean. * * * Now their power is in its infancy; in a very few years they will re-enact, on a larger theater and on a grander scale, with every feature magnified, the scenes which were lately witnessed on the narrow stage of a single State. The public corruption is the foundation on which corporations always depend for their political power.

That was six years ago; and instead of Mr. Adams warning the people now as he did when this was written against the power of these corporations, we find him cheek by jowl with the men he was then condemning and favoring a grand federation of all the railroads of the country.

There is a natural tendency to coalition between them and the lowest strata of political intelligence and morality, for their agents must obey, not question. They exact success and do not cultivate political morality. The lobby is their home, and the lobby thrives as political virtue decays. The ring is their symbol of power, and the ring is the natural enemy of political purity and independence. All this was abundantly illustrated in the events which have just been narrated [in the Chapter of Erie]. The existing coalition between the Erie Railway and the Tammany Ring is a natural one, for the former needs votes, the latter money. This combination now controls the Legislature and courts of New York. That it controls also the executive of the State, as well as that of the city, was proved when Governor Hoffman recorded his reasons for signing the infamous Erie directors' bill. It is a new power for which our language contains no name. We know what aristocracy, autocracy, democracy, are; but we have no word to express "government by moneyed corporations." Yet the people already instinctively seek protection against it, and look for such protection, significantly enough, not to their own Legislatures, but to the single autocratic feature retained in our system of government—the veto by the executive. * * * The next step will be interesting. As the Erie ring represents the combination of the corporation and the hired proletariat of a great city; as Vanderbilt embodies the autocratic power of Cæsarism introduced into corporate life, and as neither alone can obtain complete control of the government of the State, it perhaps only remains for the coming man to carry the combination of elements one step in advance, and put Cæsarism at once in control of the corporation and of the proletariat, to bring our vaunted institutions within the rule of all historic precedent.

Can the English language condemn more strongly what Mr. Adams has since with equal vigor approved and advocated?

I deal, I repeat, with Mr. Adams as a public man and a great railroad expert, whose views have been invoked in this debate by the Senator from Georgia as having great authority and with the purpose of ascertaining as nearly as possible the weight to which his recent utterances in advocacy of a new policy are entitled.

Now I will read, in order that you may have some little idea of what a grand universal pool would mean, from the argument before the Commerce Committee of the House, made by Mr. Chittenden, of New York, a description of the pool at New York:

This pool commenced in 1877; it was then a pool contract between the four trunk lines centering in New York. It has grown and stretched out its arms and increased, just as an English judge said such contracts would grow and increase, until now it embraces certainly more than forty—that was the last enumeration I had—of the principal railroads of this country. There is in New York city an equipped and organized pool government. It has its executive committee of the trunk lines; its executive committee of the pool, and another executive committee composed of one member from each pooling railroad; it has its board of arbitration, which is intended to take the place of the judiciary; it has

its corps of, I do not know how many hundred, clerks, an enormous concern, and over it all is the emperor, the commissioner, Mr. Fink, who to-day exercises a power for good or evil over the commerce and products of this country greater not only than that of any of his contemporaries, but greater than any man ever before exerted in the United States of America. He and his imperial organization are as independent of the law as it is possible for man or state to be, and the whole charter or contract which binds these forty roads into this one copartnership and confederation, judged by the principles of the common law, is as unlawful and as much against public policy, if we are to accept the declarations of the judges of the common law, as the Louisiana State lottery or any other similar institution which is confessedly without the pale of the common law.

There is a picture of the New York pool. Now imagine a pool or combination of all the railroads in the United States, embracing the whole country under one head and a central government like that in New York and you see exactly what the railroad men of the United States are trying to accomplish. I have here the New York Journal of Commerce, handed me by a friend, of January 15. I read from the headlines of a column in order to show what the people may expect from the proposed "railroad federation," judging it by the New York pool:

Diverted freights and trade—Mercantile interests sacrificed to railroad pool necessities—Roundabout shipments and delays—Complaints of buyers and injury of trade—Merchants and railroad men in conference—Regulation of interstate commerce.

Now hear the New York State commission and the merchants of New York about the pool:

The Merchants' Club committee was represented by Mr. William F. King, of Calhoun, Robbins & Co., who opened the case with an address setting forth the cause of complaint. "Not only," said Mr. King, "has trade been diverted from our own city, but the merchants have suffered large losses from the return of goods, because of the serious delay in delivering to the consignee. These evils began with the organization of the pooling system in 1878 and have increased with the lapse of time until for the past two years, and especially for the last year, they have been beyond the patient endurance of the mercantile community. Throughout the business of last spring every mercantile house suffered seriously by transfers of freight from the so-called fast freight lines known as the Merchants' Dispatch, the Star Union Line, the Union Line, the Empire Line, and the White Line to the Lackawanna and the West Shore, the Merchant's Dispatch alone transferring daily from three to two car-loads to the West Shore. The consequence was that from four to eight weeks elapsed before the goods so transferred reached their destination in Michigan, Illinois, and other Western States. The agent of the Merchants' Dispatch himself informed me that there were claims against them amounting to $50,000 for diversion of freight and for losses thereon. If you will pardon an allusion to the house of which I am a member, we had to duplicate a bill of merchandise purchased and pay the charges by express, the original shipment only reaching the customer in Michigan after very nearly two months' delay. All the merchants claim to have had similar trouble during the last spring with all fast freight lines having a system of connections to the West."

Mr. King here presented a quantity of documentary evidence, giving circumstantial details of cases in which delays had taken place. Among the examples was a shipment of goods by the Star Union Line which took fifteen days to reach Chicago. Several shipments to Pittsburgh, made on the 10th, 14th, 18th, and 21st of November, all reached their destination together on December 1, showing that the goods must have been held back to make up a car-load.

Mr. King continued: "The instances which these papers present are only a few of the many thousands of similar impositons from which the mercantile community has been and is now suffering, and on behalf of that long-suffering community the committee of three pray for speedy relief from these serious evils, and that such relief may be had prior to the opening of our spring business, which begins about February 1, so that the merchants here represented may be able to notify the customers that there will henceforth be no cause for complaint because of the slow delivery of whatever merchandise they may choose to purchase in this market."

I read that as a sample. There is a column representing different organizations in which similar statements are made.

I read again:

Mr. Abel Cook, on behalf of the Traders and Travelers' Union, urged that the merchants should have the right to choose the line by which they have their goods go, and said they did not like to be put in the position of suppliants for what they had a right to demand. The remedy they sought was some means of getting into court to enforce their common law rights without being compelled to resort to the Attorney-General and wait his determination in case the railroads refused to carry their freight without consent to the bill of lading imposed upon the shippers. The suggestion that the roads would refuse to act as forwarders beyond their own termini if compelled to do this he thought would be regulated by the principle of competition.

A recess here took place, after which Mr. Depew proceeded to make a general reply to the statements and suggestions presented. At the outset he said the State commission would be met by the difficulty that this is a question of interstate commerce beyond their jurisdiction. Their action could only affect one section of the business of the New York Central, and could not touch the other roads. He thought the fact emphasized the need of intelligent national legislation on the subject, and denounced the Reagan bill as calculated to defeat the very object here sought.

At the conclusion—

In the course of the colloquy Commissioner Kernan said the commission were of opinion that the pool was illegal.

That was a modest suggestion made by the New York State commissioner, Mr. Kernan. He knows that the courts of the country have declared all such combinations unlawful; but Mr. Depew reminds gentlemen of the New York State commission that this is a matter of interstate commerce, which they, as railroad commissioners of the State of New York can not reach, while at the same time he opposes all that is attempted to be done in Congress to give relief to the people.

This is a pool of forty railroads. We see here a column loaded with the complaints of men who are suffering from it, but we have not heard from the people of the other States to whom the goods sold by these merchants ought to have gone. How many of them are broken, how many are crippled, how many are injured by the action of the pool? We have not heard that. Yet in the face of the illegality of a combination admitted to be illegal because so decided by all the courts, the idea of the leading railroad men of the country is to establish a grand universal pool embracing all the railroads of the country.

Mr. President, the railroad problem has evolved an issue between two opposing ideas, and will be solved on one or the other of them. The railroad corporations must be governed by laws passed by Congress, or they will be governed by a despotism created by themselves and over themselves in a universal pool or federation which will embrace all the railroad lines in this country. Congress is brought face to face with this dilemma and must accept one horn or the other of it. Delays are dangerous, because the "grand federation" is already in process of formation under able and skillful operators, its nucleus in the city of New York where more than forty of the leading lines are already confederated or pooled under a central government strong enough already to bring the merchant princes of that great city to its feet. When the single corporation of Erie could dominate the State of New York in the manner so graphically described by Mr. Adams; when the merchants and business men of New York are already suppliants at the feet of the pool now existing there, how can any limit be placed on the power of a great federation of all the railroad corporations of the country backed by unlimited wealth, with the best talent of the country in its service, and an active, vigilant, intelligent, and well-paid army of employés at command, with power to crush all who oppose its schemes by discriminating against them and to reward its friends, with power to build up or de-

stroy at pleasure cities and towns, and to levy such tribute as avarice may suggest, unobstructed and unhindered, upon the great commerce carried over the roads, with all the influences and agencies so vigorously described by Mr. Adams for corrupting legislatures and congresses and governments—I repeat, how is it possible to resist such an organization in possession of such tremendous power? It simply can not be done, and if perfected the railroad federation will dominate and control this Government, will corrupt and undermine it.

This Government must govern and control the railroad corporations, or will be governed and controlled by them. We have at this time our choice between these propositions. If we fail to choose between them now, we may not at a future time be able to choose at all. If we adopt the Reagan bill its moral effect will be very great on the railroad corporations. Mr. Adams says that only "force" will control them. He sees nothing but the despotism of a Cæsar or Napoleon of their own creation. I desire the "force" of law constitutionally enacted, and vigorously executed by the Government of the United States, representing the majesty and the sovereignty of the American people. The Reagan bill will give this. If we pass it these corporations will realize that we are in earnest, that the people are aroused, and will govern themselves accordingly.

The moral effect upon the country of the passage of the Reagan bill will be good, because it will be universally felt to be not only a just vindication of the dignity of the Government but a grand measure of protection for the best interests of the people. The English railway commission bill has been alluded to in this debate and its admirable operations made an argument in favor of the Senate bill. The harmless and impotent measure proposed in the Senate bill is utterly unlike the English railway law in every respect. There is no point of resemblance between them.

The English commission possesses all the powers and attributes of a court. It is composed of three commissioners. That commission has jurisdiction over every question affecting railroad transportation That court can summon witnesses. It can fine for contempt; it can issue injunctions; it can issue executions; it can do everything that any other court can do. That is the English commission. It is no such powerless thing as is provided for in the Senate bill.

And besides, the English railroad regulations act, as it is called, formulates the law to be administered by this commission. I read one extract from it, which alone contains the substance of the Reagan bill:

> That all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers, and of all goods, or carriages of the same description, and conveyed or propelled by a like carriage or engine passing only over the same portion of the line of railway under the same circumstances.

In conclusion, Mr. President, I read from the speech of Mr. Charles Francis Adams, delivered before the Committee on Commerce of the other House. He said:

> So far as the railroad system and the railroad business of the country is concerned, I propose to argue to this committee, and endeavor to convince it, that hitherto in the case of the vast body of legislation enacted in respect to them no attempt whatever has been made to study anything except outward manifestations; that almost uniformly the symptoms have been mistaken for the disease and the remedies intended to remove the evil have consequently only tended to aggravate it. That I may have any chance of success in this effort, I

must ask you to dismiss all preconceptions from your minds and to fairly consider what is the real cause—

Now, mark you—

what is the real cause of the inequalities, the injustices, the discriminations of the existing railroad service—those ills of the body-politic for which you are now undertaking to prescribe? I will not stop to dwell upon them or to denounce them. It is not necessary to do so, for I hold them to be proven and their existence notorious. The record is full of evidence on the subject. We all know—every one knows—that discriminations in railroad treatment and charges do exist between individuals and between places. We all know that railroad tariffs fluctuate wildly, not only in different years but in different seasons of the same year. We know that certain large business firms—the leviathans of modern trade—can and do dictate their own terms between rival corporations, while the small concern must accept the best terms it can get. It is beyond dispute that business is carried hither and thither—to this point, away from that point, and through the other point—not because it would naturally go to, away from, or through those points, but because rates are made on an artificial basis and to serve ulterior ends.

In regard to these things I consider the existing system nearly as bad as any system can be. Studying its operations, as I have, long and patiently, I am ready to repeat now what I have repeatedly said before, that the most surprising thing about it to me is that the business community sustains itself under such conditions. The first principles—

Mark this—

The first principles of law governing common carriers are habitually violated. Special contracts, covering long periods of time, are made every day with heavy shippers, under which the common carrier, whose first duty it is to serve all equally—

As the Reagan bill requires them to do—

gives to certain parties a practical control of the markets. There is thus neither equality nor system, law nor equity, in the matter of railroad charges. A complete change in this respect is a condition precedent to any just and equitable system of railroad transportation.

That is what Mr. Charles Francis Adams felt constrained to admit when arguing before the House committee against Congressional legislation. Yet it is said that there is no ground for complaint. When twelve States in the Union have embodied in their constitutions the substance of the Reagan bill; when political conventions, boards of trade and exchange, when the leading railroad man of this country, Mr. Adams, all tell you about these grievances, they are dismissed with the remark that it is popular clamor. Mr. President, it is not popular clamor. I have shown you that in the great State of New York, the leading State in this Union, with all her wealth and power, her authorities have suppressed a little combination, a little pool of ten or twelve hard-handed canal-boatmen as being contrary to law, and that at the time the judge was delivering his opinion, in the heart of the city of New York there was a pool government, pool headquarters, with hundreds of clerks and an emperor at the head of the pool presiding over the whole, and that the great merchants of the grand and magnificent commercial center of our country were bending their knees before that power. I have shown this, and yet I am told that it is not time for the law to step in and put its hand upon these corporations and say what they shall do and what they shall not do.

Mr. President, in submitting to the lawlessness and power of these corporations we are sowing the seeds which will be reaped in a harvest of communism at some future day. When poor men see that the law takes them promptly by the throat while these powerful combinations of corporate wealth defy the law with impunity, they will think that their own rights ought to be asserted in some form or other. We can avoid this by harkening to the voice of the House of Representatives and giving

support to the bill they have sent us. It is a moderate bill. It is a conservative bill. It employs methods well known and well established in the common law. There is nothing harsh about it. It is an assertion of the power of the people and the Government that I desire to see. The moral effect of it would be worth more than Congress could do in any other way. Let the people of this country be informed that the Senate and House of Representatives of the United States have determined that this is a people's government and that no power shall live under it which is not dominated by the Government and by the people, and this the Reagan bill will do.

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INTERSTATE COMMERCE.

SPEECH

OF

HON. JOHN SHERMAN,

OF OHIO,

IN THE

SENATE OF THE UNITED STATES,

FEBRUARY 3, 1885.

WASHINGTON.
1885.

SPEECH

OF

HON. JOHN SHERMAN.

The Senate, as in Committee of the Whole, having under consideration the bill (H. R. 5461) to establish a board of commissioners of interstate commerce, and to regulate such commerce—

Mr. SHERMAN said:

Mr. PRESIDENT: I have had more difficulty in dealing with this question than any of the important questions presented at the present session of Congress. The people of Ohio are very largely interested in railroad transportation. We have 7,200 miles of railways, probably as large a number of miles in proportion to the extent of our territory as any State in the Union. Our people are largely interested as owners and managers of railways, the capital and debts of such corporations amounting to over $500,000,000. Therefore it is that the people of Ohio take the deepest interest in the proposed legislation by Congress. I can safely say that without division of party, the people of Ohio are in favor of strong, just, and liberal legislation upon the question of transportation, and the management and control by Congress of inter state commerce.

There is no doubt expressed anywhere but that Congress alone has the power to deal with this question. The interstate commerce extends to the great body of the commerce of this country. The local commerce within the limits even of a State so large as Ohio is comparatively small. Nearly all the surplus productions of Ohio are shipped to States beyond our limits, and nearly all that is consumed not the products of Ohio has been the subject of interstate commerce. So that I may say that the body of the commerce of the State is interstate. It so happens, too, that nearly all the great leading lines of railway in the United States cross that State; certainly all the four great trunk lines running from east to west, and some of those running from north to south. So our people are deeply interested in this question, and I have no doubt but that both my colleague and myself would agree that the people of Ohio are more intensely interested in the subjects embraced in the bill than in any other bill pending before Congress.

In respect to the power of Congress over the subject, as I have said, it is undisputable. We find it plainly written in the Constitution:

> The Congress shall have power * * * to regulate commerce with foreign nations, and among the several States.

It is a broad and exclusive power that has not yet been fully exer-

cised as it was expected to be by the framers of the Constitution. It is only asserting a trite fact when I say that but for the necessity of regulating commerce with foreign nations and among the States the Constitution probably would not have been formed at the time it was. In the very first movements to form the National Government the importance of regulating commerce among the States was declared to be the leading motive for the formation of the National Government.

It must be remembered that at that time commerce among the States was but a very small item compared to what it is now. All the States were located along the line of the Atlantic Ocean. Our commerce with foreign nations then was immensely greater than our commerce among the States, but the enormous development of this country has changed the whole order of things. Now our foreign commerce, exports and imports together, embraces about $1,500,000,000, and our internal commerce is estimated at $15,000,000,000, or ten to one. It is pretty difficult indeed to estimate what is the extent of our interstate commerce. It is so vast that figures seem to fail to express the immense extent of it.

It is affirmed that the navigation along the Ohio River and the Mississippi River is greater than our whole external commerce. It is said that the navigation of the lakes far exceeds our commerce with all foreign countries. So the question we are dealing with is not only with greater amounts than any other problem before us, but affects every class of our people in the broad extent of our country.

Under these circumstances, I have felt it my duty, without heretofore taking any share in this debate, not being a member of the committee which framed the bill, to examine it with all the care and attention I could give to it, and I shall express my opinions in as few words as possible as to the choice to be made between the two bills.

We have two propositions before us, one called the Reagan bill, which has been debated and passed by the House of Representatives, and another called the Cullom or Senate bill, framed by one of our committees, and which has beeen debated here in antagonism to the Reagan bill. We are called upon to choose between them. I would vote for either if the other was away. It is, therefore, a mere choice between the two measures; and I propose now to give the reasons why I think on the whole the Senate bill is the most conservative in its character, the most wide-reaching in its effect, the most beneficial to the people of all the States interested, the most beneficial even to the people of Texas and to the regions where the Reagan bill seems to have the greatest strength.

If I can convince any Senator, as I have convinced myself, that this will be the effect of the Senate bill as against the Reagan bill, then I shall have at least justified the vote that I shall give in favor of the Senate bill, and I shall have justified my conduct to my constituents who are writing to me in great number to act upon this question promptly. That general public opinion has been in favor of the Reagan bill solely because it proposed legislation controlling railways, but, as a matter of course, the people have not yet studied or examined the details or provisions of the Senate bill, so they have not been able to give any opinion on one as against the other.

Mr. MAXEY. Will the Senator from Ohio allow me to ask him a question?

Mr. SHERMAN. Certainly.

Mr. MAXEY. The Senator states, and I was very glad to hear him say so, that he would vote for either bill if the other was out of the way. Now, I ask him as a practical legislator with a great many years' experience, if there is not a far greater probability that if the Senate votes for the Reagan bill it will become a law rather than if the Senator should vote for the Senate bill it can become a law? As a question of practical legislation, would it not be better for the Senator to support the Reagan bill in order to procure a law on the subject?

Mr. SHERMAN. If I shall be able to show that the Senate bill is better than the Reagan bill the Senator ought to join with me in passing the Senate bill, and the House, I have no doubt, would agree to it. I know the feeling in the House, because I have conversed with members of the House of both political parties who voted for the Reagan bill, and they are not entirely satisfied with its provisions, but with the expectation and hope that the Senate would make such changes as would make it more wide-reaching, comprehensive, and effective than the Reagan bill, they gave it their support.

The reason why Congress has not heretofore acted upon this question is very palpable. Our whole commerce is changed, not only in its extent but in the mode of transportation. Within my period of manhood every railroad in the United States has been built. When, as a young man, I crossed the Alleghany Mountains and struck a railroad at Cumberland, Md., I thought it was the greatest wonder in the world. Up to that time I had never seen a railroad. Indeed all the railroads in the United States have been built since the period of manhood of the majority of Senators. Even that great motive-power, the steamboat, has been invented, devised, and brought into being since the framers of the Constitution finished their handiwork.

So we are dealing now not with a power that is doubtful, not upon a question on which we should have any difference of opinion, but we are dealing with new agencies of commerce devised in our generation or in the preceding one, and we should bring to the subject the lights of modern experience as well as the ideas and objects that prevailed when the Constitution was formed. Steamboats and railroads are now the chief agencies of commerce. They have revolutionized commerce. No longer does any one depend upon the slow-moving sailing craft or upon the prairie "schooner" or on the old Conestoga wagon over the mountains of Pennsylvania. Our modes of communication are entirely different, and therefore we must look upon this question as practical men, and conform our measures to the wonderful development that has been made in our productions, the revolution in our means of transportation, and the almost fabulous sums invested in these new agencies of commerce.

Nearly every question which affects the problem we are now meeting has arisen within the last twenty years, because it must be remembered that until 1866 nearly every railroad in the United States was merely local in its character. There was no interstate commerce until in the last twenty or thirty years. For instance, the Erie Road ended and terminated at Dunkirk, and the State of Pennsylvania refused to allow that road and other roads to cross the State of Pennsylvania at the little panhandle up on the Lake Shore. The roads of Ohio began and terminated in Ohio. The great New York Central, which now stretches out with its mighty arm across the continent, had its terminus at Buffalo, and that road itself was divided into seven distinct corporations, and it

required years upon years to combine it into a single line from New York to Buffalo.

Take the great Pennsylvania Railroad, the tonnage of which is so enormous—more than 22,000,000 tons a year. That road itself was a local road. Within my recollection, yes, within twenty years, its terminus was in Pittsburgh, Pa. Going from Philadelphia to Pittsburgh it there terminated, and there it joined another road chartered by Pennsylvania to reach the Ohio State line, and there the line was taken up across the State of Ohio by another road, and across Indiana by another road, and into Chicago, Ill., by another road. All these roads have been consolidated within thirty years.

All the elements of this problem have changed, and now we have connecting lines of railroad, which Congress required to be made. The act of 1866 was one of the wisest laws passed by Congress. Up to that time there was no continuous and continuing lines of railroad going from State to State and doing the commerce of a continent. They were mere local roads or local lines, subject only to local regulations. Now they are transcontinental; they are more than national—they are international. These lines have been formed by their connecting links, one after another.

I ought to have said that when the Baltimore and Ohio road was started it was purely a local road, and when it approached the borders of the State of Pennsylvania that State refused to allow the Baltimore and Ohio road to cross its borders, and for years that was a matter of contention. The Baltimore and Ohio was compelled to deflect this line to Bellaire instead of the natural route to Pittsburgh. It was purely a local road, and could only go through, as it did, with the assent of the State of Virginia. When it came to the Ohio line, Ohio, by another railroad, took up the Baltimore and Ohio line and extended it.

Until within twenty or twenty-five years these were merely local roads without the slightest power to contract outside of the limits of the State, but gradually from a community of interests these connecting lines formed their links by pooling, you may say, or a species of pooling, by connecting their separate corporations, binding them in connecting links by contract, until Congress in 1866 declared, as the first regulation of interstate railway commerce of an effective character in this country, that where railroads connected they should be run as continuous lines. That is the law which was referred to by my honorable friend from Iowa [Mr. WILSON]. He says that he was part and parcel of the law and helped to make it. That was the first law passed by Congress to make interstate commerce possible in this country, and that has been done within twenty years.

We thus by our law connected these lines of railroad so that instead of being local corporations they are great national corporations. The Pennsylvania line extends in one unbroken management from New York to Chicago, with interlacing lines stretching every way like a great tree.

Mr. SAULSBURY. I should like to ask the Senator from Ohio, by his permission, whether the railroads enjoy that privilege under the authority conferred by Congress, or whether the privilege which they have of uniting and consolidating is not derived by State legislation from the State charters of the companies that are thus consolidated?

Mr. SHERMAN. I think the whole of that grew out of the fact that the corporations were authorized to contract and to be contracted with,

and connecting lines by mutual agreements made arrangements with each other. I do not know how the State of Delaware could give any railroad in Delaware the right to go into Pennsylvania. The National Government can give that right as a regulation of interstate commerce, or by mutual agreement between adjoining States the power to connect may be given to corporations created by such States.

Mr. SAULSBURY. Does not the Senator see that a State Legislature may charter a company and give that company the power to consolidate with any other company chartered by another State on such terms and conditions as the two companies may agree upon? That is frequently done. But the Senator was referring to an act of Congress, and I wanted to ascertain whether there was any authority conferred by Congress under which any railroad companies were to-day operating conjointly.

Mr. SHERMAN. The States incorporating two separate companies may authorize them to contract with each other and to make these arrangements, but Congress made it the duty of the roads to do so. It was not a mere permission to contract and extend and connect their lines of communication, but Congress made it imperative, and two railroads that merely touch each other by contact are compelled by the terms of that law to make through rates the whole extent of their lines. There is no doubt whatever but what that is within the power of Congress, because the power of Congress to regulate commerce includes also the power to regulate corporations created by States as well as natural individuals.

Mr. SAULSBURY. If the Senator will not think me impertinent for asking the question—for it is information I want——

Mr. SHERMAN. Certainly; I yield to the Senator.

Mr. SAULSBURY. I have had some difficulty in arriving at a conclusion in my own mind as to what was the proper thing to do in reference to these bills. I wish to ask the Senator whether under the power to regulate commerce he thinks Congress has any authority whatever to deal with the question of freights and fares charged by railroads? I should like to hear his views on that subject.

Mr. SHERMAN. I have no doubt of it. I do not want to go into these collateral questions, because it will prolong my remarks. I did not intend to speak long, but wished merely to give the reasons why I prefer one bill rather than another.

I do not think Congress has the right to impair the obligation of contracts. I do not know by what authority Congress can change the contract made between the State and the individual, as is proposed in the Reagan bill, by providing that no railroad in the United States shall charge more than 3 cents a mile, although its construction may have cost a million dollars a mile, and although the State may have authorized the railroad to charge 5 cents a mile. Congress can not change the contract between the State and an individual or corporation.

I have been looking for gentlemen on the other side of the Chamber to correct this flaw in the Reagan bill. I should like to know, and to have them answer at their leisure, where is the authority in Congress to change a contract between a corporation and a State. Here is a question where the doctrine of States' rights may come in. It seems to me that wherever States' rights should be asserted to do justice to a corporation they are not asserted, but where they may be used to rob or plunder a corporation they are asserted and enforced.

That Congress ought to legislate upon this subject is manifest to everybody. The railroads engaged in interstate commerce have cost, or are represented by securities amounting to $7,000,000,000. The number of miles of railroad is over 120,000 miles. All the legislation that can affect these railroads must come from the National Government. Their local charters end with local boundaries. The States of Pennsylvania and New York, though powerful and great States, have no right to regulate contracts made beyond their boundary line. They have no right to regulate anything in the way of commerce extending beyond their boundary line, and unless the railroad corporations are subject to the jurisdiction of Congress they are a power within a power, stronger even than the State.

If it were not for the power of Congress over these corporations they would be a supreme power in this country. But Congress is armed with full power to do by them as they may think it right in accordance with the Constitution of the United States, and without respect to local laws. It is Congress, therefore, that must act upon this subject, and all of us on this side of the Chamber, as well as on the other, admit that the power of Congress is not only ample but it is exclusive, for if it should be claimed that what we attempt to do here can not be done, then a railroad corporation, armed with the charter of a State and with the authority of the National Government to connect at State lines across a continent, would be above and beyond all law. I do not believe that at all. I believe that the New York Central Railroad and the Pennsylvania Railroad, two of the greatest railroad corporations in this country, are just as amenable to the laws of the land, just as much within the local power of Congress, as I myself am subject to its jurisdiction.

Now, Mr. President, what is the duty of Congress in this respect? The first duty of all is to protect the people from imposition, from injustice, from wrong. Therefore I have no difficulty in dealing with the Reagan bill by admitting that with the exception of the attempt to change the contract between the State government and the corporation Congress has the power to do all that is asserted by the Reagan bill.

This is but the beginning of legislation in regard to railroads. Hereafter it will continue and increase. I have no doubt that the making of suitable regulations in regard to railroads in this country will be one of the great and immediate duties of Congress. I am therefore not disturbed about the power, but I say it is the duty of Congress to protect the people from injustice by the railroad corporations. I am willing to go as far as any one in doing justice, but I do not want to go so far as to destroy these great agencies of modern commerce. I do not want to destroy the goose that lays the golden egg. It is the commerce of these railroads that has united our country more than any other circumstance. It is the commerce carried on by these railroads that has enabled us to people and populate a vast region of country in the West. It is the engineering, progressive, pushing force of these railroads into the wilderness that has made our continent and our country a magnificent whole. Before that time California was separated from the Missouri and the Mississippi. The North and the South were widely separated from each other for want of communication. Railroads have done more to knit and bind this country into one magnificent whole than all other agencies combined. Therefore, while we protect our own people, we ought not to destroy the railroads.

I have no doubt that the power of Congress will be appealed to—it

is appealed to now—not only to protect the people but to protect the railroads themselves and the owners of those railroads. Within the twenty years since the railroads have formed their connecting lines they have been eaten to death by parasites. Every railroad has had its little inner ring and all sorts of cunning schemes and devices have been made and entered into not only to cheat the people but to cheat their own stockholders. I doubt if there is a single railroad in our country that has not in it and about it, composed of its officers, some of these parasites which prevent proper dividends from being paid to the stockholders. What are they? The sleeping-car company is one. Railroad corporations make an arrangement with a sleeping-car company, an organization entirely outside of them, to run cars over their road. Such contracts become much more valuable property than the road itself which carries the cars over the rails.

Another mode is by express or freight companies. I believe that this is pretty well broken up now, but for years express and freight companies have been incorporated and lines have been started, the Red Line, the Blue Line, and all sorts of lines, over the railroads. In this way a property right was created by a contract between the board of directors of a railroad with some favored individuals in the railroad, and then privileges and rates were given to the express companies which bled and ate the life and substance and property of the railroad stockholders. Those have existed, and I have no doubt we shall be called upon to protect the stockholders from this imposition. So with telegraph lines. Besides that, many boards of directors by voting themselves high salaries and creating enormous expense, run the road not for the benefit of the owners, but for the benefit of a favored few.

Therefore it is possible in our country that railroad stock may sell for $20 or $30 a share in the market, when every man knows that this railroad stock will never pay a dividend as long as water runs or fire burns. But it is the power to control the corporation given by the votes of the stock that enables men to seize and hold a great corporation and pay enormous sums for the stock of the road merely to exercise the power granted by the corporate law for their own gain and profit.

There are these and others; but I am not going to waste much time about it. In some cases salaries are given which shock almost our sense of justice, salaries not only by one corporation but by a dozen corporations. Not only that, but in some cases, although the railroads are represented by directors who are sworn, or at least whose duty it is made to guard the property they represent, they pile mortgage upon mortgage on the property, create income bonds, preferred stock, and all sorts of liens; and in that way many of the best railroads in this country, that would earn a fair dividend on their actual cost, by subtle plans on the part of the stockholders, the interest of the innocent citizen, men, women, and children, who perhaps have invested their little sums for stock, is fairly eaten out, lost, and destroyed.

There is no doubt that Congress, which is now exercising its power in this country to protect the people, will be soon called upon to protect the stockholders, and I shall be just as ready then to vote reasonable legislation to protect against these abuses as I would vote for the bill to protect against undue discriminations, fares, and tolls in favor of particular individuals. I speak of this merely to show that this power over the subject-matter is vital to us, and that we ought to so act upon this bill as to show that we are fit to be trusted with this great and important power.

I say that legislation by Congress upon this subject is demanded not

only in the interest of the people, but in the interest of property honestly held and honestly earned. At this time the railroad system is in very great danger. No one can doubt that the enormous competition which has been created by rival lines has in many cases reduced the profits of the railroads and their earnings. The necessity of providing for dividends on watered stock and the like has been so great that there are but very few railroads of the United States, powerful as they are, which can pay dividends to their stockholders. Therefore any hostile legislation to further cripple their business ought to be very carefully guarded. If we do not look out we may really break down those corporations and compel them to divide the long-extended lines into broken links, and then the rates of transportation will rapidly advance. The decrease in the market value of railroad securities in the last two years is represented to be about 40 per cent. It has disappeared in the market value. Few of the roads are now earning dividends.

It has been sometimes said in this debate that the law of competition is a sufficient regulation for railroad corporations. In some respects the law of competition has worked well. Since these lines have been connected the cost of transportation in the United States has been reduced in a marvelous degree. I remember when I was a member of what is called the Windom Committee on Transportation we traveled all over the United States; we took the testimony of all the expert railroad men we could find and men engaged in commerce of various kinds. Upon one question we found a singular unanimity of opinion, and that was that the minimum cost of transportation was 1 cent per mile. The figures were produced, the actual details, the expenses shown, and this simple problem was absolutely demonstrated.

It was shown by the general superintendent of the New York Central, who gave us the details of the cost of transportation, and the same evidence was given by other corporations, that the minimum of transportation was 1 cent a ton per mile. That would be $10 a ton from Chicago to New York, the distance being about a thousand miles. That was their statement of what is the lowest cost. Now, this system of competition has gone on since then, and there has been a progress made in railroad building, a change so great that it is almost marvelous when I now think of it. That was only ten years ago, and yet since that time by the introduction of steel rails, by new and improved cars, by new machinery in the way of brakes, by a thousand ingenious devices of our own people, the same freight can be transported over the same railroad for less than one-half of what it could be only twelve years ago.

I have here a table cut from one of the commercial papers showing the enormous reduction that has been made by competition in long lines of transportation. I find that the freight from New York to Chicago on a bushel of wheat weighing sixty pounds was in 1868 29 cents; in 1869, 25 cents; in 1870, 22 cents; in 1872, 28 cents, and so on. Then running down again, in 1874 it was 16 cents; in 1875, 14 cents, and so on until in 1884 the freight on a bushel of wheat from Chicago to New York was $9\frac{3}{4}$ cents. So that the freight by competition has been reduced to $9\frac{3}{4}$ cents. Here is the statement:

WHEAT PRICES AND FREIGHTS.

[From the Cincinnati Price Current.]

In the following compilation will be shown the annual wheat crops of the United States and exports (flour included), stated in millions of bushels, with the lowest and average price of No. 2 wheat in Chicago, and average rates of

freight from Chicago to New York per bushel of wheat by lake and rail, with the lowest Chicago price and freight to New York added, annually for seventeen years, from 1868 to 1885, inclusive:

Year.	Crop.	Export.	Lowest price.	Average price.	Freight to New York.	Freight and price.
	Millions.	*Millions.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
1868	224	30	104⅛	170⅜	29	183⅛
1869	260	54	76⅛	111⅛	25	101⅛
1870	236	53	73½	97	22	95½
1871	231	40	99⅛	121⅜	25	124⅛
1872	250	52	101	125⅜	28	129
1873	281	92	89	117½	26⅞	115⅞
1874	309	73	81⅛	108⅜	16⅝	98⅜
1875	292	76	83½	98⅞	14⅜	97⅞
1876	289	57	83	102⅞	11⅜	94⅜
1877	364	93	101⅛	128⅛	15⅜	117⅛
1878	420	149	77	96⅜	11⅜	88⅜
1879	449	181	81⅜	99⅜	13½	94⅞
1880	498	186	86⅛	105½	15⅜	102½
1881	380	122	95⅜	115½	10⅜	105¾
1882	504	149	91½	118	10½	102
1883	450	111	90	101⅜	11⅛	101⅛
1884	513	.....	69⅛	82⅜	9¾	79½

In the above the exports are for twelve months beginning on July 1 of the year stated. The freight rates for 1884 are the average from January 1 to September 1.

What more do you want? If any man had told me when we were around on that pilgrimage seeking for cheap transportation, that without a law of Congress, merely as the effect of competition, the price of the transportation of wheat would be reduced from 29 cents, as it was then, to 9 cents, I would have said that our committee ought to disband because the thing would work out its own cure. So it will to a great extent, but I shall take occasion to refer to the low rates. The rates are now so low from the great competing points owing to competition, say from Chicago, Saint Louis, or Cincinnati, that if our Texas grangers should try to reduce them more they would break up every railroad corporation in the country. The rates can not be further reduced. There is a point to which you can go, and beyond that you will draw the life-blood.

The attempt to carry wheat at a lower rate than 9¾ cents in a long haul would be absolute destruction to all the railroad corporations. They can not do it. It may be that we shall have some new invention, new devices, that will still enable them more and more to cheapen the rate. We know that the great competing railroad companies, each of them representing probably a hundred million dollars, are eagerly watching out for every chance of competition, and they will reduce the rate still more and more. That has been done by competition probably more than could have been done by legislation.

If I were seeking only by the passage of this bill cheap transportation, I would say, "hands off; let these men compete with each other." But that is not all that we are trying to accomplish by the bill. It is claimed that while from certain points transportation is low enough, probably, from other points shorter in distance and shorter in haul the rates are much higher, and that there is an unjust discrimination made between citizens, between towns, between States, and between individuals; that

the railroad companies make contracts with favored individuals by which they give them the monopoly of transportation.

The common case pointed out by the Senator from Kentucky, I believe, was that the Standard Oil Company had a rate which actually drove out of existence all competitors in their line of business. That is wrong, intrinsically wrong, and I shall vote to break it down if there is power enough in Congress to do it. If these corporations are soulless, they ought to be heartless, they ought to make no discrimination, giving no favor, but making the same rule apply to all classes of transportation under the same conditions; and to the extent that this measure will tend to effect that object I think it is of vital importance.

The Reagan bill makes ample provision against discrimination. It says that no discrimination shall be made. It forbids it. It declares that if it is done it shall be illegal, and then provides a penalty at the end of a long lawsuit, and the measure of the penalty is three times the damage done. The damage may be $10, in which case the penalty would be $30, and then the plaintiff who has prosecuted his suit under the operation of that bill, or has sought his remedy, would probably be broken up in the contest, and the railroad would not care about drawing a check for $30, but would pay him in silver dollars, or in any way they thought would be easiest. The first objection I have to the Reagan bill, and I beg Senators to think of it, is that it is a penal bill, penal in its nature and in all its provisions. It has no remedial feature in it, except the remedy that can be recovered at the end of a long lawsuit. You can not make such a bill as that useful or operative, except to punish crime, and you can not make this a crime of a magnitude and character which would justify you in sending to the penitentiary the president or the directors of the company. If you choose to do it, if you attempt to carry the measure by penal law, you ought to furnish penalties and punishments that would send the president of the railroad to the penitentiary.

But that is not all. The Reagan bill provides that the remedy shall be in the State courts, in any court where an agent can be found. Whether the injury occurred in that State makes no difference. Wherever the man who complains of the action of the railroad chooses to sue he can sue. He can go before a justice of the peace, if the amount is within the jurisdiction of a justice, or go before a county court, if it is over a hundred dollars, and commence suit in any tribunal. What is the effect of the judgment? You may make the railroad pay the judgment, but what does that amount to? Nothing.

Besides there is no appeal from that decision. Suppose the railroad insist that they are not violating the law, must they try that great question, which turns upon the construction of an act of Congress, before a justice of the peace in Texas? Must they try that great question before some local tribunal in a State perhaps hostile to this legislation? Must they try that question in a State which probably does not own a single share of the railroad stock affected by the operations of that judgment?

According to the proposed law, although the question involved may be a construction of the Constitution of the United States, although it may be the construction of the very law that we are passing, yet that case can in no event be carried to the Supreme Court of the United States or to any United States court. Thus thirty-eight different tribunals all over this country, with their varying decisions, may be called upon to decide upon the terms of this measure without any power

whatever to take the case to a court whose decision will be universally acknowledged. This, it seems to me, is the worst feature of the Reagan bill. It seems to be State rights gone mad. The very cause of action is given by an act of Congress. The whole thing is granted by Congress, and is national in its nature. No State could give such authority over a corporation beyond its limits, and yet this question, growing out of national law, can not be brought to a national court, but must be decided finally in a local tribunal.

The language is plain and clear. No such measure as that can meet my sanction. If under the circumstances and under the clauses of the judiciary act the case involved in any of these local courts does involve a construction of an act of Congress or of the Constitution, or any national question, then the right to carry it before the national authorities must be given. Otherwise you have struck out the whole foundation of your judiciary system. We have a national judiciary to construe the laws of Congress and pass upon all questions arising under the national law; and yet the bill excludes the Supreme Court of the United States and all the national courts from any jurisdiction over any case that may arise under it, and confines it to the local tribunal. But that is not all.

Mr. COKE. Will the Senator from Ohio allow me to interrupt him?

Mr. SHERMAN. Certainly.

Mr. COKE. I refer the Senator to the House or Reagan bill, in which I think he will see it is provided that a citizen who has been injured by a railroad company may prosecute his remedy in either a State or Federal court, as may happen to have the jurisdiction of it in the locality.

Mr. SHERMAN. That is, it gives him the choice.

Mr. COKE. Yes, sir; it gives him the choice.

Mr. SHERMAN. But when he commences his suit in a State court, as he always would, the decision of that court is final, and no provision is made to transfer the case, indeed it is prohibited that it shall be transferred, to the United States court.

Mr. COKE. A transfer of the cause to the Federal court is prohibited, but I ask the Senator if there are not methods of reviewing the decisions of State courts, outside of this proposed act, already provided by writ of error?

Mr. SHERMAN. I believe that the Supreme Court would hold without question that that provision of the proposed law is unconstitutional, but I do not want to pass an unconstitutional law merely to allow the Supreme Court to reverse it.

Mr. COKE. The question I put to the Senator is, if every citizen has not a right already granted, in a mode already provided, to bring before the Supreme Court of the United States an infraction of a law of the United States?

Mr. SHERMAN. I doubt very much whether this provision does not fall within the decision in the case of Prigg *vs.* The Commonwealth of Pennsylvania, where it was decided by the Supreme Court of the United States that Congress had no power to impose upon any State an act in the nature of the enforcement of what would be regarded as a criminal act. The act in this case is in the nature of a *quitam* action. It is an action for a penalty. I have not the slightest idea but what the Supreme Court would hold it to be unconstitutional, at least to the extent that it denies to the citizen of the United States living not in Texas where the suit is brought, but living say in Pennsylvania, the right by writ of error to transfer the case to the Supreme Court of the

United States. If they do it they do it because the law is unconstitutional which attempts to restrain it.

But that is not all. I do not believe we have the power to confer jurisdiction upon the State courts to enforce penalties. That is fair and square in the face of the decision of the Supreme Court. Here is a penal action where treble damages are to be allowed. What right has Congress to impose upon a State the enforcement of these laws or to confer jurisdiction upon it? Any State might refuse to do it clearly.

Mr. COKE. I will ask the Senator, with his permission, if the laws of Congress are not supreme all over the United States, and if they are supreme I ask him if the State courts can not enforce them?

Mr. SHERMAN. I do not think the laws of Congress are supreme over a State to compel a State to pass a law to suit our convenience. Why should the United States, with an ample judiciary power, with authority to create courts anywhere and everywhere of all kinds and descriptions, rely absolutely and exclusively upon State courts to pass upon the construction of our own laws? I do not think that this is a provision which should appear in the law. I believe it is plainly unconstitutional.

I should like Senators to answer me another question. What right has Congress to change a contract made between a State and a citizen? It is true that the provision of the Constitution——

Mr. COKE rose.

Mr. SHERMAN. I will hear the Senator.

Mr. COKE. I understood the Senator to put a question to me.

Mr. SHERMAN. The Senator will have time enough to answer.

Mr. COKE. I understand the Senator to refer to the provision in the House bill prescribing 3 cents per mile as the maximum rate.

Mr. SHERMAN. That is what I refer to.

Mr. COKE. I voted to strike out that provision, and all the gentlemen on this side of the Chamber in favor of the Reagan bill so voted, while the gentlemen on the other side of the Chamber voted to keep it in. I ask the Senator to propound his question to some of his friends over there.

Mr. SHERMAN. Perhaps, taking the usual course which I have seen pursued on both sides very often, we require you to perfect your own proposition in your own way. Perhaps that is the way, but at any rate that provision is clearly unconstitutional. Senators around me say, for I do not think I was present at the time, that other questions were involved in the same motion. But I certainly assure the Senator that if he will move to strike out that proposition I shall vote with him to improve the bill to that extent.

Mr. COKE. It will be done.

Mr. SHERMAN. There is another feature of the Reagan bill which struck me at first with a good deal of force, and it was only after a careful examination that I was able to satisfy myself that it ought not to be put in. I refer to the following provision, in section 4 of the Reagan bill:

> That it shall be unlawful for any person or persons engaged in the transportation of property as provided in the first section of this act to charge or receive any greater compensation for a similar amount and kind of property, for carrying, receiving, storing, forwarding, or handling the same, for a shorter than for a longer distance, which includes the shorter, on any one railroad or pipe-line.

As an abstract proposition it would appear to be right and just that no railroad should be authorized to charge less for a greater distance

for transportation of the same kind of property than for a shorter distance. That would seem to be right and fair, but when you come to examine this question in all its surroundings such a provision as that would in my judgment not only do great harm to the people of the United States, but I believe it would confer a great benefit upon the railroad companies to the injury of the people; and I hope my friend from Texas will listen to me upon that point. I have no doubt that if that provision should become a law, wheat would not be transported from Chicago to New York for 9¾ cents a bushel, by a great way. It would leap up at once to a rate in harmony with the local rate.

I know enough about corporations and railroads to know that the first effect of this provision would be to compel an advance of freights at all the competing points. Why? If the Pennsylvania Railroad, for instance, should attempt to carry wheat at the rate of 9¾ cents a bushel over the whole line of its road from Chicago to Philadelphia and from all the points along that line, the result would be bankruptcy to any railroad in the United States which would undertake to carry all its freight upon that kind of a rate. Before submitting to bankruptcy the railroad would take the other alternative; they would raise the rate at Chicago, and then "all Rome would howl." Then our Western grangers and our Texas friends would begin to feel that their cattle would have to pay a considerably larger sum. All our Western friends, whose country has been developed by railroad competition, would find then that they would have no advantage as they now have over the people of a State like Ohio, where we lie midway between the great Western ports and the Atlantic coast.

If I were speaking only for the people of my own State, and only in a narrow, selfish interest, I should vote for this proposition, because I know the effect of it. While it might not reduce our local freights in Ohio, it would advance the freights in the West, and would relieve us from the enormous competition which Iowa now makes with us in raising wheat, pork, corn, and all those things; but I do not think it would be right. Nor do I think it is wrong for the railroad companies to make this discrimination in favor of competing points. Why? It is known that the great body of the transportation of a railroad is its local transportation. Different railroads differ in regard to that; but the general rule is that the local transportation is 70 per cent. and the through transportation is 30 per cent., but in most cases it is 85 per cent. local and 15 per cent. through.

For the purpose of gaining a share of the through transportation from Chicago or Saint Louis or the great interior points, the railroads struggle for the through business, because whatever they can get from that source is so much added to their income without much increasing their expenses. They struggle for it and make competition and make the lowest rates of transportation; but if you relieve them from that necessity and make a mandatory iron rule by which they shall charge no more from Chicago than from Fort Wayne or other places it will raise their rate, and they will stand by that rate and say that "Congress, composed largely of our fellow-citizens from Western States, compel us to do it in order to live." That would be the effect of it; and I do not think that any railroad man who hears me or any man accustomed to their mode of business would think otherwise.

I have heard the remark made in the course of this debate that the railroads would not carry wheat for less than it would cost them. No, but it must be remembered that in speaking of the whole cost of a

railroad you must take into account the interest on their bonds; you must take into account all of what are called in technical phrase fixed charges, charges which can not be avoided, not only the running expenses and interest upon their debt, but fair dividends to their stockholders, proper improvements and additions to their equipment. When they are contesting for the trade in Chicago they can dispose of the fixed charges for the competition and say, "If you can get a portion of the through freight from Chicago we can afford to carry it at a reasonable profit on the actual running cost." I hope Senators will understand the difference between them.

The running cost of a railroad is the cost of the wear and tear of railroad cars, the wear and tear of machinery, the pay of the engineer and the brakeman, and that is about all. If they can get from this through traffic, which gives to the West an enormous benefit over our traffic, simply a compensation for their running charges or a reasonable profit, they will compete until they get their share of it. That is all there is about it. But if, on the other hand, they shall not be permitted to do that, but shall charge as much under all circumstances from Chicago through to New York as from all the intermediate points, as a matter of course they will first make a rate which they think is just and fair for their local stations, and then they will put Chicago at the same rate, and if you complain they will point to your own law as a justification and an excuse for it. There can be no doubt about it.

There is another thing I heard my friend from North Carolina [Mr. VANCE] was very much troubled about—pooling. Pooling sometimes reduces rates; sometimes it may be made to increase rates. Where there is but a small transportation, as on the failure of a crop or the like, the freights have fallen off largely, and then pooling prevents competition, because there is not enough business for all the competing roads; but when there is a great crop as there was two or three years ago, or whenever there is a great crop, using all the equipments and machinery of all the competing roads, as a matter of course pooling is beneficial, because they are enabled then at less cost to divide the business among them. On some roads it may be best and most economical to run all the wheat, on another road it may be best to run all the cattle, and they divide the freight by arrangement between them, some carrying one article, some another, according to the grades, the equipments, the nature of the road, and a thousand circumstances which enter into it. In such cases the pooling arrangement is a beneficial one, and instead of adding to the cost it actually diminishes it. So if we attempt to impose upon these companies an absolute iron rule which would prevent pooling in all cases, it might defeat the object of this bill.

Mr. President, I do not propose to go any further in the discussion of the Reagan bill. I have no doubt that the general rules laid down by it are right. I respect the desire of the Senators who seek to pass it, but I say it will not accomplish the object they seek to gain, but on the other hand it will add to the burdens of all the western people by compelling railroads to charge them local rates substantially. It will prevent railroads from making such arrangements with each other as will enable them to run cheaply and successfully all the vast products of this country. It will compel a discrimination in many cases, because where a railroad has an advantage by physical law, as the New York Central Railroad has an advantage by physical law, having a lower grade, if they are all compelled to charge the same rate at all times, it

gives to the road having physical advantages a great advantage over another road that has had to overcome mountains and cross valleys.

Now, a few words in regard to the Senate bill. The Senate bill goes upon the idea of a board of arbitration. I think if I had been called upon to frame a bill I should have called it the board of arbitration instead of a commission. But a name is nothing in a matter of this kind. What is the theory of the Senate bill? We know now that the freight charges and the regulations of railroads are generally made by a little congress of five or six people chosen one from each of the great railroads. They meet at Chicago, or at the Fifth Avenue Hotel, or some other place where it is convenient and pleasant, and they sit down and make laws which affect every person in the United States. Sometimes they discriminate against persons, sometimes against places. They make unreasonable rates from particular localities, they make discriminating rates against certain articles, they lower rates in regard to other articles not founded upon any reason.

In other words, as I have heard one of them say, they put such rates as the market will afford without much respect to their equity. They are compelled to do it. They are legislating for a local corporate interest. Unquestionably in doing this they often do injustice by their discrimination, and the people complain all over the country. The people say, "We ought to have redress." Take a town in Ohio, where the people say, "Our charges are more than another neighboring town where there is more competition." That is wrong, and everybody says it is wrong, but what is their redress? A suit in the courts against a great railroad corporation. The suit under the Reagan bill would be the merest farce, to enforce a penalty of three times the amount involved.

On the other hand, the bill of the Senate provides for a board of arbitration, not a little local court whose opinions would not be respected by the corporation or anybody else, but a high tribunal composed of men equal in dignity to the Supreme Court of the United States. There any citizen may seek his redress; any town may make its plea. That tribunal, in the terms of the bill, is armed not with the power of issuing execution but armed with the moral power of the people of the United States. A complaint is made in the name of the people, under this proposed law, before this tribunal of nine distinguished judges, among the best in our country, who ought to be non-partisan in their character, because the bill I believe provides for that—men of the highest type, who are not interested in the subject-matter. The complaint is sent to that tribunal and they hear it in a summary manner, as they could rapidly do, and they would say at once, "This discrimination is unjust; it is wrong; we pronounce it to be, in the language of the law, extortion." Now, no railroad will submit to that. No railroad would violate in a plain case the injunction of this high tribunal, because if they did the decision of the tribunal would be certified to the proper officers of the Government, and, armed with this decision, with the facts and circumstances of the case and the opinion of the court, the parties complaining would apply to the courts of law.

The only reason, I suppose, why the commission is not armed with the power of judgment and execution is that under the Constitution they can not be. They are not a court in the true sense of the word. They might be created a court if necessary, but I think the general judgment of the people would be against that. If they were constituted a court they would be judges for life, and these are to be men in

active life, able to work, able to take testimony and to hear causes. In other words, they ought to be men of such activity that they can travel around through their respective circuits, receiving complaints and hearing complaints so far as they are authorized to hear them. The moral powers of such a commission would be greater than the judgment of fifty State courts, which can not be supervised.

With the exception of the provision about the long haul and the short haul I say that the Senate bill contains every safeguard, every restriction, every provision against injustice that is contained in the Reagan bill. Its language against discrimination is as strong as that in the Reagan bill. It does not prescribe as an absolute rule that the charges should not be in any case that may be conceived less on the short than on the long haul, but it does provide that the charges shall be reasonable, and it is authorized to pass and report upon the question as to how far rules may be prescribed in the future. I only utter the language and repeat the very admirable statement made by the Senator from Alabama [Mr. PUGH], when I say that it contains more wide-reaching provisions that will command the respect of the railroads and command enforcement and execution than the Reagan bill.

The more I study it I regard it with more favor. At first I feared it was not strong enough, but I believe now that it contains the foundation of a code which will be built up by the railroad commission into a body of laws as the commercial law of England was built up by the masterly ability of Chief Justice Holt and Lord Mansfield. It has been said over and over again that the commercial laws of that time, without the aid of acts of Parliament, were built up by judicial decisions by those great men in a time when commerce was reviving over the country. All the laws relating to bills of exchange and promissory notes and a vast field of commercial law were the dictate of judicial decision. I believe that this commission, if composed of such men as it ought to be, will be able from time to time to frame such rules and regulations.

Mr. MCPHERSON. Will the Senator from Ohio yield for a question?

Mr. SHERMAN. Certainly.

Mr. MCPHERSON. The statement that he makes, found in the Senate bill, that the commission will have the power to determine as to the reasonableness of rate, gives them the power to fix rates, does it not?

Mr. SHERMAN. They are authorized by the general phraseology of the bill not only to say what rates are reasonable, but to prescribe rules and regulations. Indeed, their field is as broad as the power of Congress. Whatever can be done under the authority to regulate commerce can be recommended by the commission.

Mr. MCPHERSON. Then the Senator places it a good deal stronger than my language did. Their power is undisputed; it is not restricted in any particular at all; the discretion of the commission is the only thing in the world that is to govern the rate. The rate must be reasonable. It must depend entirely upon the judgment of the commission whether the rate is exorbitant or reasonable. Let me ask the Senator if he thinks there is any power lodged in Congress, under the Constitution of the country, to so regulate common carriers as to fix the rates upon which they shall do business?

Mr. SHERMAN. I say that their decision is not final, because if they should decide, a railroad company is not bound to obey their decision. Therefore a suit may be commenced in the proper tribunal,

and the court would decide that question, so that after all it is their moral power and influence that will be most operative.

Mr. McPHERSON. Very true; but if the Senator will bear with me a moment longer, the bill gives the commission power to fix the measure of damages resulting to the aggrieved party. He may appeal to the court from the judgment of the commission.

Mr. SHERMAN. There is no judgment rendered.

Mr. McPHERSON. After all, the commission have the power to fix the rates and determine their reasonableness. Now let me present another question to the Senator.

Mr. SHERMAN. I trust the Senator will not interfere now. I shall be through in five minutes, if he will let me proceed.

Mr. McPHERSON. I should like to ask the question, because it touches on this matter.

Mr. SHERMAN. I did not hear any question put to me. I waited for a question.

Mr. McPHERSON. Very well; I shall wait.

Mr. SHERMAN. If the Senator will put the question and not premise it with an argument I shall answer it with pleasure.

The experience of the States shows that the form of a commission here proposed is the best. We have a railroad commissioner in Ohio who has but very little power, and yet his influence has been good. In many of the States they have commissions very much like the commission proposed in the Senate bill, and the experience in every one of them has been favorable in securing the rights of the people. What has been adopted by the States in regard to their local commerce might well be followed by the United States in regard to the broader field of interstate commerce.

Again, the bill is merely tentative, inquiring, experimenting, pushing forward. No man ought to deal with a great question like this with a broad-ax or prescribe rules that have many exceptions to them. It is far better to proceed by tentative, slow, and progressive acts, until finally we shall have a railroad code established in this country after a few years' experience.

Then, besides, it is cheap and easy. Every man can be his own lawyer in this business. He writes an intelligent statement of his grievance to intelligent men, and if they require evidence to fortify his statement they can require it to be given and it will be given cheaply and plainly. The facts may not be disputed.

Then it will apply uniform rules throughout the United States. These rules are made by national authority, while if the rules governing railroads as to what is a reasonable charge are to be decided by legal tribunals, we have thirty-eight different decisions, all differing, and no one having any force beyond the limits of the State line.

Mr. President, this proposed law is based upon general principles which apply to the whole country and not merely to localities, and it will be, therefore, respected and observed, while the laws of one State will not be respected or observed in another, and the decisions of the courts in one State will not be respected and observed in others. It is based upon general principles.

Then it allows a just leeway for exceptions. There is no rule stated in either of these bills that has not some exceptions. I could give them almost from my own knowledge of railroads. Then on the question of discrimination I could point out cases where discrimination would be justified, although this prohibits it in all cases. That is probably a